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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION
(Department of Labour & Employment)

NOTIFICATION

New Delhi, the 7th April 1970

S.O. 1361.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Bombay, in the industrial dispute between the employers in relation to the management of the Kolar Gold Mining Undertakings and their workmen, which was received by the Central Government on the 17th March, 1970.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BOMBAY.

REFERENCE NO. CGIT-6 OF 1965

PARTIES:

Employers in relation to the Kolar Gold Mining Undertakings.

AND

their workmen.

PRESENT:

Shri A. T. Zambre, Presiding Officer.

APPEARANCES:

For the employers.—Shri T. Rangaswami Iyengar, Legal Adviser with Shri B. Nand, Chief Labour Officer.

For the workmen.—Shri K. P. Sachindranath, Vice President Mysore Branch of the Indian National Trade Union Congress for—

(1) K.G.F. Electricity Dept. Labour Association, Corgaum K.G.F.

(2) Champion Reef Mine Workers' Union, K.G.F.

(3) K.G. Hospital Workers' Union, Corgaum K.G.F.

(4) Nandydroog Mine Labour Association K.G.F.

(5) Medical Establishment Employees' Union, K.G.F.

(6) David Arokiadoos, Monthly Rated Employees' Union, K.G.F.

(7) S. Rajagopal M.L.A. General Secretary, K.G.M.U: Employees Union, Corgaum P.O. K.G.F.

(8) Shri A. Mariasusai Secretary K.G.M.U. (Medical Establishment) Employees' Union K.G.F

(9) Shri T.S.S. Pillai General Secretary, Monthly Rated Employees Central Union K.G.F.

(10) Shri J. C. Adimoalam N.G.Os. Central Union K.G.F.

(11) Shri M. C. Narasinhan, Advocate with Shri V. M. Govindan President, Shri K. S. Vasu Secretary, Shri Kannau Vice President, & Shri Subramanam Asstt. Secretary for the Nandydroog Mine workers Union.

(12) Shri K. B. Thimmayya, President Nandydroog Mine Labour Association.

(13) Shri S. O. Bhagyanathan, General Secretary, Champion Reef Mine Workers Union, K.G.F.

(14) Shri C. M. Arumugum, President Champion Reef Mine Workers Union,

(15) Shri M. Dhanpal, General Secretary, K.G.M. Champion Reef Mine Workers Union.

(16) Shri V. Muthukumar, Vice President K.G.F. Hospital Workers Union.

(17) Shri Luke Secretary and Shri L. Jerry Asstt. Secretary K.G.F. Electrical Deptt. Labour Association.

(18) Shri S. R. Shumugam MLA.

(19) Shri B. Reddy Advocate.

(20) Shri M. Joseph President and Shri Sundrerajan Secretary K.G.M. Transport Labour Union.

(21) Shri M. P. Srinivasa Rao, Nandydroog Mine Labour Association.

(22) Shri A. Asser Handydroog Mine Labour Association.

STATE: Mysore. INDUSTRY: Gold Mining.

Dated the 28th February, 1970

AWARD

The Government of India in the Ministry of Labour and Employment by their order No. 24/28/64-LRI dated 16th January, 1965 referred to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the management of the Kolar Gold Mining Undertakings and their workman in respect of the matters specified in the following schedule:—

SCHEDULE

"Whether the demand of the workmen of the Kolar Gold Mining Undertakings for the payment of bonus for the period from the 1st December 1962 to the 31st March 1964 is justified and if so, the rate and basis on which the bonus has to be paid.

2. The peculiar feature of this reference lies in the fact that though in the referenceorder the dispute is alleged to be one between the management of the Kolar Gold Mining Undertakings and their workmen in fact the real dispute is between the Government of India and the workmen employed in the Kolar Gold Mining Undertakings. This fact has an important bearing in the settlement of the various issues involved in this reference and I think it proper to state the circumstances under which the Government of India came to be the employers of the undertakings and had made this reference.

3. It is common knowledge that formerly the gold mining operations in the Kolar Gold field were being carried out mainly by four companies (1) Champion Reef gold mines of India (KGF) Ltd., Mysore State, (2) the Mysore Gold Mining Company (KGF) Ltd., Mysore State, (3) the Nandydroog Mines (KGF) Ltd., and (4) the Oorgaum Gold Mines (KGF) Private Ltd.. These companies were operating the gold mines by virtue of leases of mining rights obtained from the Government of Mysore. After the second World War broke out the value of gold increased and the Mysore Government had imposed a duty on gold produced in

the mines and this duty was required to be paid in addition to the royalty, rent, cess, and taxes payable under the lease deeds. However, as the gold mining companies represented that the imposition of gold duties meant hardships for them and it did not leave sufficient provision for depreciation and development necessary for the mines the Act imposing the duty was repealed and a fresh agreement was made. In pursuance of this agreement four rupee companies corresponding to the four sterling companies were formed and all the assets of the sterling companies were transferred to the corresponding K.G.F. companies and the mining operations were carried out by these companies in conformity with the terms and conditions of the agreement.

4. The four companies had common establishments viz., electricity department, medical department and the central administration department. The Gold mining companies were managed by the same managing agents by name John Taylor and Sons. Subsequently Oorgaum mine had ceased mining operations in the year 1953 and the assets and liabilities of that company were transferred with the concurrence of the Government to the Champion Reef Gold Mines of India and there remained three companies operating the gold mines with the help of the allied establishments.

5. In the year 1956 the Mysore Legislature passed the Kolar Gold Mining Undertakings Acquisition Act 1956 (Mysore Act 22 of 1956) according to the provisions of which the gold mining industry was nationalised and the assets and liabilities of the companies vested in the State from 29th November, 1956. The Government of Mysore State took over the establishments as going concerns and the undertakings were continued as an office under the Government of Mysore and the assets and liabilities of the companies were transferred to the Mysore Government and the State Government carried on the mining operations under the department till the year November 1962.

6. But as gold mining was an important industry the Central Government took over these gold mining undertakings from the Mysore Governments from 1st December 1962 as a going concern by an order dated 26th November 1962 and it was directed that the Kolar Gold Mining Undertakings would be a subordinate office under the administrative control of the Department of Economic Affairs of the Ministry of Finance and the management of the undertakings was with effect from the date to be continued in accordance with the provisions made and was to vest in a Board of Management constituted for that purpose thus the Kolar Gold Mining Undertakings is a departmentally run undertaking and from that date the Government of India became the owner of the industry and in fact are the employers of the workmen working in the mines.

7. I have already observed that the State of Mysore had nationalised the gold mining undertakings and they were operating the mines from 29th November 1956. Every year the State Government had given bonus to the workmen. But after the Government of India took over the industry no bonus was declared for the period 1st December 1962 to 31st March 1964 and hence in September 1964 the workers who were represented by about eight unions made a demand for the payment of bonus urging in the demand-notice to settle the claim for bonus in time and to have it to be paid for the Christmas and Pongal festivals. As the management did not take any action to settle the claim the workmen staged demonstrations in the third week of December 1964. The workmen went on strike. In the midst of the strike on the 22nd of December 1964 the management made a proposal to pay an advance for festival pending the settlement of the claim for bonus. In the meantime the matter was also referred to the Conciliation Officer (Central) Bangalore who issued notices intimating his intention to hold conciliation proceedings in respect of the dispute. Accordingly conciliation proceedings were held but they ended in failure and after the failure report the Government referred the dispute by the order as stated above.

8. The Government had forwarded a copy of the reference Order to the management addressed to the Managing Director of the Kolar Gold Mining Undertakings, Oorgaum. There were about 19000 workmen represented by the various unions and the copy of the order was also forwarded to the eight unions. Notices of the reference were issued to the management and to the unions but the parties had not filed any written statements. The management submitted an application that as the workmen who had made the claim for bonus had not given them copies of their statements of demands they were not able to file their statement. Ultimately the management filed their first statement dated 15th May 1965.

9. Before stating the contentions of the parties regarding the present dispute it will be desirable to make a reference to the bonus claim made by the workmen for the years 1953-54 and state the history and the decision in that proceeding. The Central Government Industrial Tribunal had in that case by an award against the companies granted bonus to the workmen for this period. But subsequently on nationalisation the Mysore Government during the pendency of the proceedings had taken over the companies filed an appeal against the award in the Supreme Court and it was pending as Civil Appeal No. 648/57. This appeal was heard and decided on 22nd May 1968.

10. The main contention raised by the undertakings opposing bonus was based on the ground that in the two years there was no available surplus out of which bonus could be paid. It was alleged that under the deed of variation the companies were required to pay in consideration of the abolition of gold duty a levy called contribution in addition to the royalty and taxes payable under the leases. The Contribution was payable on the basis of the accounts of each month subject to the adjustment at the end of the year with reference to the annual audited accounts. For the purpose of computing the amount of this levy of contribution some deductions were permissible out of which one was the 15 per cent of all expenses debited in the public revenue account to be reserved for depreciation and development expenditure of a capital nature and the management had raised the contention that while calculating the available surplus as per the LAT formula thus this amount of 15 per cent should be treated as a prior charge.

11. But the Industrial Tribunal in the bonus proceedings, while making the award, rejected the claim of 15 per cent rehabilitation over and above the statutory depreciation and hence it was contended before the Supreme Court by the Mysore State Government that relying on the two earlier awards the management had claimed the permissible deductions under the head of prior Charges from the gross profits the annual contribution to the pension fund and 15 per cent of the revenue for depreciation and development expenditure which according to them corresponded to the rehabilitation, replacement and modernisation charges. The adjudicator had not allowed the initial and annual contribution to the pension fund and 15 per cent of the revenue expenditure. But the Supreme Court though approved the reasoning adopted by the learned Adjudicator had not allowed the prior charge and the amount for rehabilitation and replacement and modernisation for want of sufficient evidence.

12. As the management argued that they were misled by the previous awards the matter was remanded and the Supreme Court remitted to the Tribunal the issues regarding initial contribution to the provident fund and the deduction under the head of rehabilitation. After the remand the Central Government Industrial Tribunal Shri A. Das Gupta heard the parties and gave his findings. In his findings dated 29th August 1958 he came to the conclusion that there was no available surplus from the profits of the two years and made a report to the Supreme Court. But before the matter was taken up by the Supreme Court for final decision the then employers—the appellants the State of Mysore and the workmen settled the dispute of bonus for the two years amicably and they decided how to calculate the available surplus for the period upto 31st March 1961 and the workmen were paid bonus for the two years.

13. Subsequently also the State Government paid bonus to the workmen every year and the workmen have received the bonus for the period till 1st December 1962 when the Central Government took over the management of the undertakings.

14. By their first written statement in the present proceedings the employers had denied the claim and adverting to the Supreme Court's judgement in C.A. No. 648/57 and the terms of compromise had contended that by the compromise the State Government had for the purpose of calculating the available surplus agreed to deduct lesser amount as rehabilitation then the amount found by the Central Government Industrial Tribunal. The provision for rehabilitation charges for the period in question would be much more and if the available surplus was calculated on the basis of the compromise formula for the period there would be no available surplus but a large deficit and the workmen were not entitled to any bonus.

15. The Champion Reef Mine Workers Union. The K. G. M U. Employees' Union and the Mysore Mine Workers' Union have by their written statements raised similar contentions that the Government of Mysore took over the four companies on the 29th November 1956. They formed an undertaking to manage

the four companies which is the largest industrial unit of the State employing about 19000 workmen. Government got substantial revenue both before and after nationalisation of the mines and the gold production has promoted the economic development. There has been a growing demand for gold and the undertaking has started developing the industry. The Government continued to explore work to find out new ores. The Undertakings have been holding virtual monopoly and dictating terms to users. The development of gold with marked improvement in quality finds improved market in this country.

16. It has been further contended that under such circumstances Government of India took over the undertakings on 1st December 1962 and adopted a stringent policy by introducing 14 c.c. gold. The value of gold has considerably improved because Government of India is regulating the prices and the workmen have been drawing wages far below the minimum wages as envisaged by the Fair Wages Committee and the workmen have natural discontent as compared to the very high salaries drawn by the officers. The workmen feel that in spite of their efforts which brought substantial profits they are deprived of legitimate shares of the increased profits. Tracing the history of the wages it has been contended that there were no proper incremental wage scales for the workmen. The unions had agitated to improve the wage structure and the Government of Mysore had appointed a Committee called the K. G. M. Minimum Wages Committee to go into the question of wage scales. The representatives of the company had agreed to the recommendations of the committee but refused to implement them and then the matter was referred to the Industrial Tribunal. The award was given in the year 1955 and the workmen were paid Rs. 24.9.9.—as dearness allowance per month. During the pendency of the dispute before the Tribunal the parties had entered into an agreement on dearness allowance and it was agreed between them that over and above 100 points the workmen would get 2.3 annas per point with effect from 1st September 1954. There was no revision of the pay scales and most of the employees had reached their maximum. In the year 1961 after a prolonged discussion, the management decided to give a fixed D.A. of Rs. 60/- per month and the workers had to give up the linking of D.A. with the Index number which has put them to loss and there was a wide gap between the actual wage and the living wage and as the workmen have contributed to the profits they are entitled to get adequate and substantial bonus to fill in the gap between the living and the actual wage.

17. In the written statement the workmen have made a grievance that the working results of the company were not available but on their own assessment they were more than sufficient to meet the general appropriation and demands of the workers. The profits were quite considerable and it was in the fitness of things that the workmen should get a fair share out of the profits. They have further by their written statements requested that the undertakings should be directed to produce the duly audited statements of accounts for the financial years 1961-62, 1962-63 and 1963-64, a statement showing basic wages and dearness allowance drawn by each employee for each of the financial years 1961-62, 1962-63 and 1963-64 and a statement showing statutory depreciation etc. for the same financial years.

18. The Mysore Mine Workers' Union by its statement dated 26th July 1967 has contended that it was the first time that the workmen of the Kolar Gold Mines had been unceremoniously denied even the minimum bonus despite the prosperity of the industry. In the past the workmen have never been paid even fair wages and realising that there was a yawning gap between the wages actually paid and the subsisting wage in this industry the employers had been continuously paying the bonus since 1947 irrespective of the fact that there was or there was no available surplus in terms of the balance sheet. Even after nationalisation of the gold mines in the year 1956 the employers have been paying bonus and payment of bonus of at least a minimum amount in the industry has become an implied agreement or condition of service and the payment of bonus has acquired a special characteristic. It has been further contended that at any rate the basis of payment has not always been within the four corners of the Labour Appellate Tribunal's formula after the nationalisation of the industry and the main object had been to pay at least a minimum amount of bonus to the workmen in order to alleviate their suffering arising out of the low wages paid to them in the context of ever rising cost of living and the practice and usage over a long period has recognised the justness of the demand of the bonus for the workers irrespective of the available surplus in terms of the L.A.T. formula.

19. It has been contended that in view of the circumstances the reference to the alleged agreement between the parties in the matter of calculation of rehabilitation in the proceedings for bonus for the year 1953 and 1954 is irrelevant inasmuch as notwithstanding the absence of so-called surplus the bonus used to be paid for the relevant years and was not paid on the basis of those calculations.

20. The gold mining industry was nationalised in the year 1956 and since then it has been run as a departmental undertaking. From 1956 to 1st December, 1982, the undertaking was under the management of the Government of Mysore when the State Government enacted the law governing the taking over of the mines and it was guaranteed that the condition of service would not be varied to the disadvantage of the workmen. Even at the time when the Government of India took over the mines it was emphasised that there would not be any detrimental variation in the matter of service conditions and other privileges which had accrued to the workmen by usage and custom and otherwise and the workmen are entitled to the bonus.

21. It has been further contended that the workmen in the industry had given up several of the rights to help the industry on nationalisation. For a long time the dearness allowance that was being paid to the workmen was linked to the consumer price index but when the Government of Mysore suggested that it should be on a flat rate basis the workmen agreed to the suggestion though they were aware of the sacrifices they were required to make. At that time it was agreed and the workmen were assured that the practice of payment of minimum bonus would be continued and the workmen are entitled to get at least the minimum bonus.

22. It has been further contended that the workmen would be entitled to bouns during the period in question even in terms of the Labour Appellate Tribunal's formula if exaggerated claims of the mangement were excluded. It has been contended that the profit and loss accounts of the undertakings has taken credit for a number of items of expenditure which could not be allowed as expenditure for the purpore of bonus calculations and the workmen's claim for bonus was justified. It was alleged that the present wage level was below even the fair wage standard. That bonus had been paid even during the years of loss particularly after nationalisation and as such payment of minimum bonus had become a condition of service and the payment of minimum bonus was a term of implied agreement and it was just and proper to apply the principles of economic and social justice recognised by the Bonus Act for the payment of minimum bonus and the award of payment of bonus would be just and reasonable.

23. The K.G.M.U. Transport Labour Union has by its written statement raised objections similar to those raised by the other unions in respect of the regular and customary feature of the bonus paid at the time of the festival every year and the assurances given by Government to the workers at the time of nationalisation. It has been further contended that the mining industry is a nationalised industry and being under the Parliamentary control could not be expected to show prominently any surplus and hence the issue of bonus should be settled more on *ad hoc* basis than on the minuses or pluses. It has been further contended that the bonus formula is not applicable to the undertaking and as in all undertakings and industries run by Government of India every year bonus is given to the employees as a matter of course the mine employees of the K.G.M.U. should also be given the bonus on *ad hoc* basis as they were being paid every year till the gold mining industry has been taken over by the Central Government.

24. The K.G.M.U. monthly rated Employees' Union Central Union by its statement of claim has contended that the gold mining industry on nationalisation ceased to be an industry with commercial bearings. The Government of India have decided that the gold produced by the mines shall not be sold in open market and the international price that has been impressed on the gold has no relation to the market prices of other commodities. The gold has no real selling price—hence the usual profit, loss or balance sheet has no meaning in the commercial sense and so the local gold mining industry has become a regular gold supplying service and as there is a unprecedented inflation of prices and the value of the real wages has been reduced to a considerable extent the grant of bonus has became absolutely necessary and the employers should grant bonus for the period of sixteen months at the rate of one day's salary for every week.

25. Subsequently the management by their rejoinder have denied the allegations that the workmen of the undertakings had not been paid fair wage. According to them the wages of the workmen had been the subject of adjudiction and

the wages have been revised far in excess of what was awarded by the Central Government Industrial Tribunal and there was no yawning gap between the living wage and the wage paid in this undertaking. It was further contended that whatever bonus was paid in the past had been given with reference to the working results of the period based on available surplus. They have denied that after nationalisation of the mines the employers had paid bonus despite losses and though the available surplus may not have been sufficient to meet the quantum of bonus it was paid out of the profits and in some years when the profits had been meagre the bonus was paid on considerations like the receipt of royalty. However whatever bonus was paid for the eight months prior to the taking over of the undertaking by the Central Government the amount had been debited to the accounts of the Mysore Government and the Central Government had nothing to do with those payments.

26. It has been further contended that there is no warrant for inferring an implied agreement or condition of service to pay minimum bonus and there was no implied agreement or condition of service in that respect. There was no past practice or usage over a long period to entertain the demand for bonus irrespective of available surplus in terms of the Labour Appellate Tribunal's formula, and there was no obligation on the part of the employers to pay the workmen any bonus without reference to the available surplus. It has been further contended that after the passing of the Bonus Ordinance and the Bonus Act, bonus can be claimed only under the provisions of that Act and the Ordinance and in the case of the undertakings which are not covered by the Act there can be no claim for bonus by workmen the Bonus Act and the Ordinance do not apply to the Kolar Gold Mine Undertakings as it is a subordinate office under the administrative control of the Department of Economic Affairs of the Finance Ministry and their workmen cannot make any claim for bonus.

27. It has been further contended that even if it held that the workmen could claim bonus under the Labour Appellate Tribunal's fomula there was no available surplus to warrant the grant of any bonus. Whatever bonus was paid previously was paid with reference to the Labour Appliate Tribunal's formula and to the compromise petition filed before the Supreme Court and after making the calculations the quantum of bonus was arrived at. It has been contended that no service conditions or privilege had accrued to the workmen by usage, custom or otherwise nor is there any safeguard in this respect. Under the Kolar Gold Mining Undertakings Aquisition Act, 1956, no right has accrued to the workmen to claim bonus by usage and custom and the employers have not acted contrary to any assurance or promise denying bonus to the workmen and under section 5 of the Kolar Golar Gold Mining Undertakings Acquisition Act the terms and conditions of the employees could be altered by the Government.

28. It has been further contended that the Kolar Gold Mining Undertakings is the property of the Union of India and the State was fully aware of the directive principles but in the absence of resources the emoluments of the employees cannot be increasd. The K.G.M.U. had ceased to be a profit earning undertaking and the Union Government was carrying on the mining industry with a view not to deprive a large labour force of employment. The Finance Minister had stated in Parliament in June, 1963, that the gold mines would have to be closed down if efforts to reduce production cost of gold and cutting down losses in working failed, and in view of the want of available surplus the claim for bonus was not justified. They have denied the allegation that the unions were assured that the practice of giving minimum bonus would be continued. There was no such practice of giving minimum bonus. The calculations would show that there was no available surplus but a huge deficit. There is no law prior to the Bonus Act that the workmen of an undertaking were entitled to any minimum bonus in the absence of profits without making any provision for prior charges. Existence of available surplus was a condition precedent for the grant of bonus to the workmen and the contention about principles of social justice statutorily recognised by the new Bonus Act would come into play was untenable. There was no obligation to pay to the workmen any minimum bonus and the workmen are not entitled to any bonus for the period in question.

Bonus as an Implied Term of Service

29. In addition to the demand for profit sharing bonus the workers have in the alternative claimed bonus as an implied term of service. The Mysore Mine Workers' Union has in their subsequent written statement contended that the employers have been paying bonus every year since 1947 irrespective of any available surplus. Even after nationalisation of the gold mining industry the employers

have paid bonus despite losses and it has been paid continuously for a number of years. It is also connected with the Christmas and Pongal festivals and from the circumstances and the time and method of the payment of bonus it should be inferred that payment of bonus is an implied agreement or condition of service. In support of their contentions the union has examined Shri V. M. Govindan the President of the Mysore Mine Workers' Union and has also produced a statement showing how the employers had paid bonus in the past. At the time of the arguments it has been further contended that the workers can also claim bonus as a customary bonus from the employers. Learned Counsel for the Mysore Mine Workers' Union Shri Narasimhan has also relied upon the rulings reported in 1962, 1 LLJ 435 (Tulsidas Khimji and their workmen) 1964, II LLJ 109 (Bombay Company and their workmen) and 1965 1 LLJ 468 (Vegetable Products Ltd., and their workmen) and it has been argued that this is a fit case for granting bonus as an implied term of service.

30. The employers have also produced a statement exhibit E-22 showing the past payments of bonus—and practically there is no difference between this statement and the one produced by the unions—and it will appear that in the past the employers had paid bonus to the workmen as following:—

Year	How settled	Quantum	Date of Payment
		Month of 26 days	
1947 (War relief bonus) including for prior years.	Agreement . . .	Three months.	1 month May 1947. 2 months Oct. 1947.
1948	Award . . .	Half month.	March 1950.
1949	Agreement . . .	One month.	March 1951.
1950	Agreement for Mysore and Nundy-droog Mines. Award for Champion Reef Mines.	One month Four month	January 1952. March 1953.
1951	Agreement . . .	One and a half month	June, 1953.
1952	Dave Award for Mysore and Champion Reef—2½ months, but agreement—	One month and 7½ days.	October, 1955.
1953	L.A.T. award Nundydroog Compromise with labour as per Supreme Court's Order 7-10-58. Mysore Mine . . . Champion Reef. . . . Nundydroog . . . Allied establishments .	One month. 15 days. 16 days. 13 days. 13 days.	December, 1955. 7th November, 1958.
1954	Compromise as per Supreme Court's Order 7-10-58. Mysore Mine . . . Champion Reef . . . Nundydroog . . . Allied establishments .	 One month 15 days Do. Two months 15 days One month 15 days	 8-2-57 & 10-6-58. 8-2-57 & 10-6-58. 8-2-57 & 10-6-58. and 7-11-58. 8-2-57 & 10-6-58. (interim payment)
1955	Compromise as per Supreme Court's Order dated 7-10-58. Mysore Mine . . . Champion Reef . . . Nundydroog . . . Allied establishments .	 20 days 20 days. 1 month and 16 days. 1 month.	 7-11-1958
1956	Compromise S.C. order Mysore Mine . . . Ch;mpion Ree . . . Nundydroog . . . Allied establishments .	 20 days. 20 days. One month. One month.	 7-11-1958.

Year	How settled	Quantum	Date of Payment
		Month of 26 days.	
	After Nationalisation and upto transfer to Central Government.		
16 months 29-11-1956 to 31-3-1958.	Agreement . . .	2 days	10-2-1960
1958-59	Agreement . . .	18 days.	10-2-1960.
1959-60	Agreement . . .	52 days.	5-1-1961.
1960-61	Agreement . . .	28 days.	23-12-1961.
1961-62	Agreement . . .	26 days.	24-12-1962.
April to November 1962 (8 months.)	Agreement . . .	17 1/3 days.	10-1-1964.

31. The correctness of the above statement has been admitted by Shri Govindan. In his cross-examination he has stated that the statement produced by the management exhibit E-22 is correct. Regarding the manner and the time when the payment was made Shri Govindan has stated that at times the demand would boil down to an advance payment on account of festival in anticipation of a finalisation of bonus payment by the employers; though it was an advance it was understood as a sort of bonus payment. He has further stated:—

> "This practice continued even after Nationalisation of the gold mining industry in the year 1956 without any material change. Though once or twice disputes arose regarding bonus they were more in relation to the quantum rather than in respect of the principle of payment of some bonus."

He has further stated that despite the fact that available surplus could not be found in many of the years workmen have had the benefit of bonus payment in the same framework even after Nationalisation.

32. The learned Counsel Shri Narasimhan on behalf of the union has argued that this evidence is sufficient to establish that there was an implied term of agreement between the management and the employees that the management would pay to the workers bonus at the time of Christmas or Pongal. It is true that the statement exhibit E-22 and the evidence of Shri Govindan shows that the employees are being paid bonus since 1947 over a period of fifteen years and it can be said that this is a sufficiently long time to suggest an inference of an implied agreement. However, I do not think that there is any other circumstance which would support the workers and indicate the payment of bonus as an implied term of an agreement or condition of service. It is clear from the statement exhibit E-22 that for the year 1947 the management had given bonus of their own accord and the payment of bonus onwards till the last payment was made either on agreements between the parties or on awards. The Dave Award under which bonus was paid for the year 1952 has been reported in 1955 1 LLJ page 511. It shows that the workmen had claimed bonus on the basis of available surplus and the learned Tribunal had held that the employees of the unit of the Oorgaum Mines were not entitled to any bonus for the year 1952. It is also clear from the statement exhibit E-22 that the rate of payment of bonus varies from year to year and also from mine to mine. It will be seen that in the year 1952 bonus for the employees of the Mysore and Nundydroog Mines was granted under an agreement while for the claim of the Champion Reef employees a dispute was raised and there was an award and these circumstances are quite inconsistent with the workers' claim for bonus based on an implied term of agreement or custom.

33. Regarding the bonus for the years 1953 and 1954 it is clear from exhibits E-12 and E-13 that the workers had raised a dispute and the same was referred for adjudication by notification No. LR-II/57(1)/56 dated 1st March, 1956. The Tribunal had granted bonus and the employers had challenged that decision and had preferred an appeal—Civil Appeal No. 648/57 to the Supreme Court. The circumstance that the management had rejected the demand and had refused to pay any bonus and this matter was referred to the conciliation machinery is quite

contrary to the suggestion about bonus based on implied term of agreement. It will be further seen that ultimately the bonus for the years 1953, 1954 and the next two years 1955 and 1956 was paid to the workers as the parties arrived at a compromise dated 7th October, 1958. This compromise was filed in the Supreme Court and the workmen of the different mines were paid bonus at different rates. The State of Mysore acquired the mines in November 1956 and the Central Government took over the mines from the Mysore Government from 1st December, 1962. It is true that the Mysore Government paid bonus to the workmen every year upto November, 1962. However, the payments were made at different rates under specific agreements and on reading these agreements I do not find any substance in the contention of bonus having been paid as an implied term of agreement or custom.

34. It is significant to note that in the agreement dated 7th October, 1958 giving the workers bonus for 4 years it has been specifically stated:—

> "As the parties have agreed to settle the bonus for the four years 1953, 1954, 1955 and 1956 together the management have agreed as a special case and on the distinct understanding that it will not form a precedent for other years to pay bonus to the workmen of the gold mines and the allied establishments."

This statement clearly shows that bonus was paid under special circumstances. The workers knew quite well how and under what circumstances it was paid and there can be no question of an implied term of employment in respect of bonus.

35. Shri Narasimhan the learned Counsel on behalf of the union has argued that in every year the workers had made a demand for bonus at the time of Christmas and Pongal festivals. The management had paid the advances in anticipation of granting bonus and this circumstance definitely establishes some sort of an agreement and it should be held that the workers are entitled to claim bonus as an implied term of agreement. The learned Advocate has invited my attention to the ruling reported in 1964 II LLJ 109 (Bombay Company and its workmen) in which it has been observed:—

> "Where the payment is connected with a festival it is possible to infer that there is an implied condition to pay something at the time of festival even though the evidence disclosed that in previous years the payment had not been made at a uniform rate."

It has been further observed:—

> "The fact that the payment was originally called advance would not detract from the conclusion that some amount was really paid as bonus in connection with Christmas festival. Once it is proved that there was an implied condition of service some amount has to be paid under the said implied term. What the minimum would be in such behalf must be decided as a question of fact. Hence it must be held that payment of one month's salary as Christmas bonus is proved as an implied condition of service between the employer and his workmen."

36. It appears from the judgment that in that case the payment of bonus was connected to the Christmas festival. Such is not the case in the matter before us. It would appear from the statement (ex-E-22) that the bonus payments have been made in different months and these payments cannot be connected to any definite festival. The payments are made in the months of January. February March, May, June, October, November and December. Sometimes it is paid around Diwali, sometimes in December around Christmas and sometimes in January around Pongal and the payments are not connected to any definite festival. Moreover it is clear from the agreements under which bonus has been paid that it has been paid on an ad hoc basis out of bounty and I do not think that the ruling will be applicable.

37. The mere fact that some of the workmen have taken advances and every year the management has given festival advances will not also help the workers. There is nothing to show in the festival advance agreements that advances were made in anticipation of a demand and a grant of bonus. The advance agreements are exhibits Ex-23 dated 14th October, 1962, exhibit E-24 dated 31st October, 1961 exhibit E-25 dated 13th October, 1960, exhibit E-26 dated 23th December, 1959 exhibit E-27 dated 10th October, 1957 and December 1956 and exhibit E-28 dated

21st October, 1963. These agreements provide for the recovery of the advances by monthly instalments. The union's witness Shri Govindan has in his cross-examination made admissions about the recovery of the advances and has stated:—

> "It is correct to say that festival advances were always given against agreements. It is correct to say that in the advance agreements the amount of advance would be recovered from the wages or from any lump sum payments that became payable if any. It is correct to say that all these festival advances have been recovered out of wages."

This evidence clearly shows that the festival advances have no connection and nothing to do with the bonus affair.

38. The conduct of the parties does not establish nor are there sufficient circumstances to infer an implied agreement on bonus and there is no question of payment of bonus based on past custom or tradition. In the ruling reported in 1965 1 LLJ 468 (Vegetable Products Ltd., and their workmen) it has been observed:—

> "It has been laid down in the decision of the Supreme Court in 1959 II LLJ 393 that on proof of the following circumstances payment of customary or traditional bonus on the occasion of a festival like Puja could be said to be satisfied, namely:—
>
> (i) that the payment has been made over an unbroken series of years;
>
> (ii) that it has been for a sufficiently long period—the period has to be longer than in the case of an implied term of employment;
>
> (iii) that it has been paid even in years of loss and did not depend on the earning of profits; and
>
> (iv) that the payment has been made at a uniform rate throughout.

Considering the circumstances that in many years the workers had to raise disputes for bonus and the matters were referred to conciliation officers and Tribunals and the references were not only for the quantum but for the grant of bonus, it cannot be said that the payment has been made for an unbroken series of years. The payments were also made either on the basis of awards or on agreements. It is also clear that the payment of bonus during these years was not made at a uniform rate throughout and the workers will not be entitled to claim bonus based on custom or tradition.

39. The learned Counsel Shri Narasimhan for the Mysore Mine Workers' Union has further argued that bonus has been paid on mutual agreements. These agreements give a go by to the Supreme Court formula. The agreements also use the word "practice". At the time of the last agreement the management also used the word "proportionate" and from the contents of these agreements it can be inferred that payment of bonus was an implied term of agreement. The learned Counsel has invited my attention to the agreement dated 22nd January 1960 exhibit E-14 in which paragraph 5 reads as follows:—

> "The other terms and conditions for the payment of this ad hoc bonus will be a per existing practice on the field with regard to payment of bonus".

If we go through the whole agreement I do not think that from the words "existing practice" it can be inferred that there is an existing practice of granting bonus. The words used refer to the terms and conditions governing only the payment of bonus. It will be seen from para 11 of the compromise agreement filed in the Supreme Court exhibit E-13 that they have referred to the terms and conditions. In this paragraph it has been stated that the terms and conditions under which the bonus as mentioned above will be paid to the workmen will be the same as those mentioned in paragraph 50 of the decision of the Labour Appellate Tribunal reported in Labour Appeal Cases, 1956, page 265." This will clearly show that the word 'practice' has been referred to regarding the terms and conditions of making payment and not giving bonus every year and there is no evidence to prove that the payment of bonus was an implied term of agreement or was granted customarily.

40. Shri Narasimhan the learned Counsel for the Mysore Mine Workers' Union has drawn my attention to the word 'proportionate' used in the annexure to E-36 the letter written by the Joint Secretary to the Government of India to the Chief Secretary to the Government of Mysore and it has been argued that this necessarily

shows that the workers were entitled to claim bonus as an implied term of employment. I have already observed that the Central Government had taken over the Undertakings from the Mysore Government in the year 1962. They had agreed to pay some compensation which was to be determined on some agreed formula. The compensation was not paid at one time but there were adjustments and in connection with the payment towards compensation Shri M. R. Yardi the then Joint Secretary to the Government of India wrote a letter dated 13th May 1965 to the Chief Secretary to the Government of Mysore and in item (iii) of annexure II of this letter it has been stated:—

Items of adjustments/credits etc.	Amount	Authority
Proportionate bonus for 1962-63 . . .	Rs. 6,49,346.11	D.O. No. Ch. S. 703/63 dated 21-12-1963 from Shri K. Balachandran, Chief Secretary to the Government of Mysore to Shri M.R. Yardi, Jt. Secy. to Government of India, Ministry of Finance.

From this letter it is clear that the amount of Rs. 6 lakhs odd paid to the workers as bonus for the period of 8 months from April 1962 to November 1962 was paid by the Central Government at the instance and on the authorisation from the Mysore Government and it appears that as the accounts were not for the full year the word "proportionate" was used and it will not show that the workers were entitled to bonus every year and accordingly they were entitled to bonus for that year as an implied term of employment.

41. The Central Government had taken over the undertakings as a going concern and had there been a term of employment and condition of service about bonus there was no question of the workers claiming the bonus for the period of eight months. The agreement exhibit E-18 in respect of this bonus mentions about the demand and it states that it was explained by the management that presently accounts were ready only for the period 1st April, 1962 to 30th November, 1962 and that therefore the discussions were confined to that period alone. This agreement does not make any mention about payment of bonus as a condition of service and the words 'proportionate bonus for 1962-63' will not show that the payment of bonus was a condition of service.

42. I have already observed that the rate of payment of bonus was not uniform nor was the payment made in connection with any festival. It has been observed in the ruling reported in 1969 II LLJ page 407 (Churkulam Tea Estate (Private) Ltd., and its workmen and another):—

> "Following also further decision, Bombay Company Ltd., v. its workmen (1964—IILLJ 109) and Bombay Company (Private) Ltd., v. their employees (Civil Appeal No. 659 of 1966 dated 22nd September 1967) it is held that when payment of bonus has not been uniform over the years, it is impossible to infer its payment as an implied condition of service unless such payment is connected with some festival. Hence the tribunal was wrong in holding that an inference could be drawn for payment of bonus as an implied condition of service in the circumstances of the instant case when the payment admittedly was not uniform and was not connected with any festival. It is impossible to infer an implied condition of service when payment has not been uniform in the past unless such payment can be connected with same festival. The claim cannot be sustained even as customary or traditional bonus because apart from the fact that it is not connected with any festival one of the essential ingredients, namely, that the payment should have been made at a uniform rate throughout is also admittedly lacking in the instant case."

The facts in the above ruling are to some extent similar to the present case and these observations will show that the Kolar Gold Mine workers are not entitled to claim bonus as an implied term of service or in the alternative as a customary or traditional bonus.

Profit Sharing Bonus

43. The workers have by their written statements claimed profit bonus contending that there has been a growing demand for gold and hence the Undertakings have started developing the industry by exploration work to find out new ores. They have been also holding a virtual monopoly and dictating terms to users and because of the prosperity the workers are entitled to share the profits as bonus. It has been contended that there were no proper incremental wage scales for workmen; they were poorly paid and they were entitled to claim bonus. The management has opposed this claim of profit sharing bonus contending that there is absolutely no profit and there is no available surplus. On the contrary there is a loss to the tune of Rs. 327 lakhs and the workmen are not entitled to claim any bonus. The learned Counsel Shri T. Rangaswami Iyengar for the management has invited my attention to the ruling reported in 1958 II LLJ 479 in which it has been observed:—

> "It is in this available surplus thus deduced that labour is entitled to claim a reasonable share by way of bonus. It would thus be clear that under this formula the existence of available surplus is a condition precedent for the award of bonus to workmen. The formula also postulates that the claim for bonus is made by workmen who are not paid what may properly be regarded as living wages. The payment of bonus is thus intended to attempt to fill up the gap to the extent that is reasonably possible between the wages actually paid to the workmen and the living wages which they ultimately hope in due course to secure."

It has been also observed in the famous case of the Muir Mills Ltd., and their workmen (1955 II LLJ page 1):—

> "There are however two conditions which have to be satisfied before payment of bonus can be justified and they are when wages fall short of living standard when the industry makes a huge profit."

and it has been urged that the two conditions precedent necessary for the justification of the grant of bonus are not fulfilled in this case and the reference should be thrown out.

44. The learned Counsel has relied upon the balance sheet and profit and loss accounts statements for the period in question and it has been argued that the *prima facie* evidence shows that as there is no available surplus the workmen are not entitled to get bonus. The unions have contended that the Labour Appellate Tribunal's formula is not applicable to the facts of this case and the gold mine workers are entitled to claim bonus because of the prosperity of the other Undertakings. Leaving aside the question about the profits and available surplus for a while I shall first discuss the evidence to find whether the second condition about the gap between actual wage and the living wage is satisfied in this case.

Gap between the Actual Wage and the Living Wage

45. It is not in dispute that prior to the year 1954 the workmen had no proper wage scale and the surface worker was getting 13 annas per day as basic wage and dearness allowance of Rs. 22 per month. The workmen had raised a dispute and the wage structure was determined by the Central Government Industrial Tribunal by an award which is known as the Dave Award reported in 1955 1 LLJ page 47. By this award the minimum wage fixed for the surface worker was Re. 1 and Rs. 1/4 for the underground worker. By the award dearness allowance was linked to the cost of living index and it was 3 annas per point over 100. This award was passed in the year 1955 and was given effect from 1st April, 1954. This award expired in the year 1958 and since then till after the period in question *i.e.* 1st December, 1962 to 31st March, 1964 there was no revision of the wage scales. On the contrary it appears that in the year 1961 the management had by a settlement abolished the linking of dearness allowance to the cost of living index fixing it at a flat rate of Rs. 60 and put the workers to a loss as the cost of living was rising. Thus during the period in question the workers were getting a basic wage as per the award *i.e.* Re. 1 for the surface worker and dearness allowance of Rs. 60 which came to about Rs. 92.50.

46. In support of their contention about the low wage and the gap the workers have examined Shri S. Rajagopal who is an office bearer of the K.G.M.U. union who has given the history about the wages paid to the workers at the K.G.F. He has stated that before the year 1954 the basic wage for a surface worker was

13 annas and Rs. 1/1 for an underground worker and the workers were paid dearness allowance which came to about Rs. 22 per month. Regarding the award he has stated:—

> "As per the award the minimum wage fixed for a surface worker was Re. 1 per day and Rs. 1/4 per day for the underground worker. In the award D.A. was linked to the cost of living index which was 3 annas per point over 100 and as per award the total wages were Rs. 80 for surface worker and Rs. 85/- for underground worker. This award expired in 1958. From 1958 the workmen did not get any regular increment in their remuneration. But as per settlement in the year 1961 a fixed dearness allowance of Rs. 60 was given by abolishing the linkage of dearness allowance to the cost of living index. There was no increase in the basic wage under the settlement."

and this evidence will show that during the period from 1st December, 1962 to 31st March, 1964 the workers were getting the basic wage fixed by the award of Re. 1 per day and a fixed dearness allowance of Rs. 60 per month. Shri Rajagopal has also given the wages paid to the workers at Bangalore the textile and other industrial workers. His evidence shows that the cost of living index at Bangalore in the year 1963 was 473 points and in 1964 it was 502 points and the workers in the textile mills in the years 1962, 1963 and 1964 were getting a basic wage of Rs. 40 and a dearness allowance of Rs. 90. Thus the total remuneration was Rs. 130 per month. It is further clear from his evidence that the cost of living index for K.G.F. was higher than for Bangalore. In the year 1963 it was 530 and in 1964 it was 554 points and in spite of these higher indices and increases in the cost of living at Kolar the worker at K.G.F. was getting only Rs. 92.50 per month as against 130 and this clearly shows that the K.G.F. worker was getting comparatively a very meagre amount.

47. The unions have made a grievance about the flat dearness allowance of Rs. 60 as cost of living was continuously rising and Shri Rajagopal has stated that according to the Tribunal's award dearness allowance in the year 1963-64 would have been Rs. 80 to Rs. 85 per worker but under the settlement of 1961 the worker was getting only Rs. 60 and has thus lost dearness allowance to the extent of Rs. 20 to Rs. 25 per month. He has further stated:—

> "The difference in the wages for the lowest paid worker at Bangalore and K.G.F. was Rs. 35/- in the period. The Bangalore worker was getting more. The Bangalore worker moreover is provided with the facility such as subsidised housing canteen food medical facilities, transport."

Thus if we compare the wages paid to the worker at K.G.F. and to a similar worker at Bangalore it shall have to be held that the K.G.F. worker was very lowly paid and was not being done justice to.

48. Shri K. P. Sachindranath, President, appearing for the union has contended that this remuneration of Rs. 92.50 per month was scanty and very meagre and the workers were not able to make both ends meet and they were ever indebted and there was a wide gap between the actual wage and the living wage. He has also invited my attention to the observations made in the report of the Family Living Survey for Industrial Workers at K.G.F. The report has been published in the year 1959 and in Chapter XIV the Labour Bureau has given important findings. In paragraph it has been stated:—

> "The average monthly expenditure for current living was Rs. 132. per family."

It is not in dispute that the cost of living is increasing every year and during the period in question the monthly expenditure for a family must have further increased and it shall have to be held that there was a wide gap between the actual wage and living wage.

49. Shri Sachindranath has also cross-examined Shri R. Sreenivas the Chief Accounts Officer of the Undertakings who has also admitted the alleged wage structure. He has stated:—

> "It is correct to say that after signing the agreement of 1961 we continued to pay upto 31st March, 1964 Rs. 92.50 as the wages to the minimum paid worker."

The dearness allowance paid to the workers was not sufficient to neutralize the increase in the cost of living and Shri Sreenivas has stated:—

"The payments made by the Undertakings to the workers may not neutralize the rise fully during the period."

and considering this evidence it shall have to be held that the mine workers at Kolar Gold fields were paid very low wages and there was a wide gap.

50. This inference will be further corroborated from the circumstance that even the learned Counsel for the management Shri T. Rangaswamy Iyengar while raising an objection to certain questions during evidence had submitted that the management had conceded the existence of a gap between the actual wages and the living wage. I have already observed that the workers have examined Shri S. Rajagopal office bearer of the K.G.M.U. Union for providing that the gold mine workers were getting very low wages. When Shri Sachindranath had put him questions in examination in chief about wages paid to the workers at Bangalore Shri Rangaswamy Iyengar had raised an objection to these questions contending that the management had already conceded a gap in the wages by their written statement and it was not necessary to ask questions on wages to the witness. However, it is clear from the reply statement of the management dated 19th August, 1967 that they had disputed the workers' contention and the questions were allowed. I have made a note about this objection while recording the evidence of Shri S. Rajagopal and this circumstance also shows the truthfulness of the workers contentions that they were paid very low wages and there was a wide gap in the actual wages and the living wages and the further question is whether the demand for bonus is justified.

Contentions about available surplus

51. As regards the second condition precedent about available surplus profits the learned Counsel Shri Rangaswamy Iyengar on behalf of the management has argued that the Central Government took over the Undertakings from 1st December 1962 and the present dispute relates to the bonus for the period of sixteen months from that date to 31st March, 1964; during this period the rates of gold had gone down; the cost of production was high and there could absolutely be no profit. It is further argued that the units of the Undertakings have maintained regular accounts and the management has produced the balance sheet and profit and loss statement for the business during the period; the gold produced was taken over by the Central Government at the I.M.F. rate and the balance sheet and profit and loss statement exhibit E-7 would show that the Undertakings are at a loss of Rs. 327 lakhs. The management has also prepared the calculations of available surplus for 16 months which is at exhibit E-9. This statement is prepared according to the Full Bench formula and it will be seen that instead of an available surplus there is a deficit of Rs. 412 lakhs and the question of granting bonus cannot at all be considered.

52. It has been further argued that even if the valuation of the gold produced is made according to the Hutti rates still there would be a gross loss of Rs. 57.26 lakhs. The management has also prepared a statement of the calculation of available surplus for the 16 months in question taking the Hutti rate. It shows the other deductions as follows:—

	Rs. in lakhs
	—37·26
Deduct Royalty	32·38
	—89·64
Statutory Depreciation	23·42
	—113·06
Additional provision for rehabilitation and normal development reserve (Excess of capital expenditure over statutory depreciation (Rs. 50·79 lakhs) or 7½ % of revenue costs (Rs. 41·90 lakhs) whichever is lower	41·90
	—154·96
Return on fixed capital invested in the Undertakings at 6% p.a. on Rs. 301·49 lakhs	9·04
	—164·00
Return on reserves employed at 2%	1·61
	—165·61

Thus according to these calculations also there is a deficit of Rs. 165.61 lakhs. The learned Counsel Shri Rangaswamy Iyengar has argued that when there is no profit but huge losses further consideration about depreciation, rehabilitation etc. is not necessary and it would be absolutely academic. As there is a loss the workers are not entitled to claim bonus and the reference should be dismissed.

53. The unions have argued that the Kolar Gold Mining Undertakings which are run departmentally by the Central Government are not in the real sense commercial undertakings. They are not run on commercial lines. The gold produced is not sold for profit but it is taken over by the State and the Labour Appellate Tribunal's formula is not applicable to the facts of this case. In the alternative it is contended that the profit and loss account of the undertaking has taken credit for a number of items of expenditure which cannot be allowed as expenditure for the purpose of bonus calculations, the gold produced is not also properly valued and even if the Labour Apellate Tribunal's formula is made applicable the workmen will be entitled to get bonus if the exaggerated claims by the management are eschewed. The accounts of the undertaking include extraneous items and the profit and loss statement and the balance sheet should not be considered as a *prima facie* evidence of the alleged loss.

54. It has been argued on behalf of the management that the balance sheets and the profit and loss account are certified by the competent authorities and the Tribunal is not ordinarily expected to go behind the various items mentioned and it must be held that there is loss to the Undertakings. Shri Iyengar has invited my attention to the observations of their Lordships of the Supreme Court in the rulings reported in 1959 I LLJ 644 at page 663 (Associated Cement Cos. Ltd., and their workmen) and 1965 II LLJ 144 (Brittania Engineering Co. *v.* their workmen). In the first ruling it is observed:—

> "It would likewise be open to the parties to claim the exclusion of items either on the credit or on the debit side on the ground that the impugned items are wholly extraneous and entirely unrelated to the trading profits of the year. In considering such a plea the tribunal must resist the temptation of dissecting the balance sheet too minutely or of attempting to reconstruct it in any manner.....
>
> The working of the formula begins with the figure of gross profits taken from the profit and loss accounts which are arrived at after payment of wages and dearness allowance to the employees and other items of expenditure. As a general rule the amount of gross profits thus ascertained is accepted without submitting the statement of the profit and loss account to a close scrutiny. Thus it may be stated that as a rule the gross profit appearing at the face of the statement of the profit and loss account should be taken as the basic figure while working out the formula."

In the second ruling 1965 II LLJ 144 (Brittania Engineering Co. *v.* their workmen) it has been observed that certified profit and loss account and balance sheet must be presumed correct unless they are challenged and demonstrated to be wrong. Hence a portion of the expenses shown as "consumption of raw materials, stores and spare parts", could not be added back on ground that it represented capital expenditure.

55. Learned Counsel has also read to me the recommendations of the Bonus Commission to show that I should not go behind the profit and loss statements. In chapter XXX para 19·7 of the Report the Commission has remarked:—

> "But we consider that Tribunals and Arbitrators should not embark on investigations into questions such as whether stocks have been correctly valued, whether a portion of the revenue expenditure which has been passed by the auditors as revenue expenditure should be considered as capital expenditure, the adequacy of remuneration to Directors and managing agents of companies whether expenditure on travelling allowance is excessive etc. The Companies Act and other Acts provide ample safeguards against malpractices. There are also provisions under the Companies Act for directing investigations into the affairs of Companies in certain circumstances."

and it has been argued that in the ordinary concerns the balance sheets are prepared under the provisions of the Companies Act while in cases in which the undertakings are run departmentally there is still a stricter control. The undertakings are on a higher level. The reports of departmentally run concerns are submitted to the Parliament and under the circumstances the profit and loss statement and balance sheet exhibit F.7 produced should be accepted as a *prima facie* evidence. The balance sheet shows a loss and as theire is no profit the workers are not entitled to claim any bonus.

56. The learned Counsel has also referred to the paragraphs in the Audit Report (Commercial) of the Central Government. In the prefatory remarks paragraphs 5 it has been stated that the receipts and expenditure and transactions relating to Departmental Undertakings form part of the Consolidated Fund of India and the Comptroller and Auditor General is responsible for their audit. The audit report of the Kolar Gold Mining Undertakings has been also published in this book under the signature of the Director of Cemmercial Audit and considering the certification of the accounts by such high and competent authorities the Tribunal must accept the correctness of the statements and hold that there are huge losses and the workers are not entitled to any bonus.

57. Shri Sachindranath on behalf of the union has argued that the balance sheet and profit and loss statements produced by the employers exhibit E-7 are not drawn in accordance with the provisions of the Companies Act. The employer's witness Shri R. Sreenivas, the Chelf Accounts Officer has admitted that the Companies Act is not applicable to the Undertakings. The Mysore Government took over the gold mining industry from the companies from 28th November 1950 and till that date the balance sheet and profit and loss statements were drawn in accordance with the provisions of the Companies Act. But thereafter on nationalization with the change in the management the system of accounting has also undergone a change and the balance sheet and profit and loss statements were drawn on different basis and are now required to be only proper and not according to the provision of any law and consequently there is no question of the strict scrutiny and this document should not be accepted as it is.

58. It has been further argued that during the days of the management under the companies there was fixed and paid up capital. But after nationalisation the whole capital structure was also charged. Shri Sreenivasan has stated:—

> "It is correct to say that there was paid up capital of the companies before they were nationalised. These companies had fixed capital in Rupees before 1956.
>
> Q. You have not got capital structure like any company registered under the Companies Act.
>
> A. No, the Companies Act is not applicable to our Undertaking."

By referring to the records the witness says that the paid up capital of the three mining companies in the year 1956 was Rs. 162 lakhs odd. The paid up capital in the year 1962 when the Undertaking was with the Mysore Government was Rs. 29388449/-. The compensation paid by the Mysore Government was Rs. 164 lakhs odd. The balance sheet and statement of profit and loss account exhibit E-7 is for the period from 1st December, 1962 to 31st March, 1964. It is not in the form of balance sheet and profit and loss account as required under the Indian Companies Act. The figures shown in exhibit E-7 are as per the state of affairs at the end of 31st March, 1964. He has stated:—

> "It is correct to say that we have not shown in exhibit E-7 the reserves and capital at the commencement of the year."

Even in the replies given by the witness to the questions put by the management he has stated:—

> "The capital of the undertaking is made up of the compensation paid to the Mysore Government plus the drawings from Government during the period less remittances made during the period. To this we have to add interest on capital and deduct losses during the period or add profit during the period in order to arrive at the nett capital employed in the business. I say so because it is in the printed account."

In view of this evidence and circumstances it shall have to be held that the capital structure of the undertakings is quite different from the capital structure in a company registered under the Companies Act. Consequently the balance sheet and profit and loss statement have not been drawn up after the accounts have been subjected to the same scrutiny and safeguards as those of the registered companies and there is much force in the contention of the union that the balance sheet and profit and loss statements as they stand cannot be the basis for finding the profit obtained.

59. A close scrutiny of the balance sheet will also show that this document does not represent all the departments and activities of the undertakings and the management has thought it proper to omit them from the statements. It is the case of the management that the gold produced has not been sold but it is taken over and merely its value is shown at the I.M.F. rate. From this it is clear

that there was no realization of any amount by the sale of the gold produced, which could have been remitted. However, the balance sheet exhibit E-7 gives a different story. It shows remittance of Rs. 4 crores odd in the left hand column. Under Government capital it states:—

	Rs.
Government Capital (Compensation paid to Mysore Government) .	301,49,346
Add withdrawals during the period from 1-12-1962 to 31-3-1964 . .	826,15,621
	11,27,64,967
Less remittances during the period	4,26,46,081
Balance	7,01,18,668
Interest on capital	16,24,941
	7,17,43,827
Less loss during the period	3,59,79,010

The profit and loss statement also shows the same nett loss of Rs. 359 lakhs odd. Thus it will be seen that the management has borrowed Rs. 26 lakhs and had remitted Rs. 426 lakhs odd. However, the balance sheet does not throw any light from where the amounts remitted were realised. At the time of arguments it was submitted that the undertakings run also a dairy, petrol pumps and grain shops and the realizations were out of that business. In that case it shall have to be held that the balance sheet and the accounts are not only the balance sheet and accounts of the gold mining units of the Undertakings. The borrowings may also be for the purpose of other business. Under the circumstances it will not be fair to wholly rely on the balance sheet and the profit and loss statement for arriving at the available surplus.

60. It is true that the Kolar Gold Mining Undertakings are run departmentally. The audit reports are also submitted to Parliament. However, I do not think that these circumstances will invest the balance sheet and profit and loss statement with a greater sanctity. Accountability to the Legislature and parliamentary scrutiny I do not think will impose any additional responsibility on the executives charged with the duty to prepare these documents; nor will such sketchy documents throw sufficient light on the detailed working and activities of the concern. Although in theory parliamentary control over departmentally run undertakings is extensive it is not so in practice. It is significant to remember that the profit and loss statement for the period ending 31st March 1964 has been prepared and finally printed after about an year and three months on 12th August 1965. It is prepared by the Chief Accounts Officer of the Undertaking and is signed by the Managing Director. These documents have been audited and certified by the Assistant Audit Officer. However, the certificate itself will show that the document cannot be accepted in its entirety. The certificate reads:—

> "I have examined the foregoing accounts and balance sheet of the K.O.M. Undertakings. I have obtained all the information and explanations that are required and subject to the observations in a separate audit report I certify the result of my audit....."

This shows that there is an audit note made by the auditor. That note has not been produced and it is not known what items that note refers to and the mere production of the profit and loss account and balance sheet will not prove that whatever has been stated in the balance sheet is correct.

61. The unions have challanged the correctness of the entries in the balance sheet and profit and loss accounts statements. It has been alleged that the amount of cost of Rs. 588 lakhs odd shown by the management in the profit and loss statement includes various amounts which are in fact either items of capital expenditure or items covered more than once and if these items are deducted from this amount the cost will be reduced to somewhere about 460 lakhs and instead of loss there would be gross profit. The employers had in their written statement dated 12th May 1965 merely stated that there were losses and that there was no available surplus to pay bonus to the workmen. The unions have in their written statement of claim dated 14th September 1966 requested that the undertaking should produce documents such as (1) duly audited statement of accounts for the financial years 1961-62, 62-63 and 63-64 (2) statement showing basic wages

and dearness allowance drawn by each employee for each of the financial years 1961-62, 1962-63 and 1963-64 and (3) statement showing the statutory depreciation etc., for each of the financial years, 1961-62, 1962-63 and 1963-64.

62. Subsequently the Mysore Mine Workers' Union had filed a supplementary written statement and had made specific allegations about the inadmissibility of items of expenditure in the statement of accounts. In para 6 they have stated:—

> "Without prejudice to the contentions raised above it is submitted that the workmen would be entitled to bonus even in terms of the L.A.T. formula if exaggerated claims by the management are eschewed. The profit and loss account of the undertakings has taken credit for a number of items of expenditure which cannot be allowed as expenditure for purposes of bonus calculations."

The cross-examination of the witness will also show that the unions have questioned the correctness of the major items of expenditure and it was suggested that the monies spent on development, replacement, construction of roads, buildings etc., have been wrongly included in the revenue costs. It has been also contended that the amount of wages of Rs. 332 lakhs on salary, wages and other items etc., includes a portion of the capital expenditure and some items were taken twice over. Leaving aside these contentions about wrong inclusion of the items in the cross examination by Shri B. Reddy the witness was specifically put questions about manipulation of accounts:—

> "The last eight months of the Mysore Government were in loss and subsequently after the Government of India took over it is continuously in loss.
>
> Q. After the Government of India took over it is continuously a losing concern. Is this loss in the balance sheet brought about by the way in which the accounts are manipulated?
>
> This question is objected to on the ground that the questioner presupposes that the accounts are manipulated. The learned Counsel for the workman submits that it is a suggestion on behalf of the workmen and hence the question should be allowed. The question is allowed.
>
> A. No."

63. Thus it is clear that the unions had challenged the correctness of the figures in the balance sheet. It was their contention that the amount of the total cost of Rs. 558 lakhs includes various items of capital expenditure, amounts which should not have been charged to revenue and which should be deducted from total and in view of these allegations I do not think that the balance sheet and the profit and loss accounts statement entries can be accepted as true merely on the production of the documents and the auditor's certificate.

64. The profit and loss statement challenged by the union is as follows:—

Costs:		
Consumption of Stores and Spare Parts		1,78,37,430·00
Power		40,43,932·00
Salaries, Wages, Gratuity and other Benefits		3,32,65,577·00
Contribution to Provident and Pension Funds		18,24,192·00
		5,69,73,131·00
Less: expenditure incurred for:		
Capital works including work in progress and sundry credits	97,38,045	
Welfare work	3,39,772	
Repairs and Maintenance of Bldgs.	12,48,134	
Gold realisation charges	6,866	
Watch & Ward Establishment	20,076	
		1,99,52,893·00
		4,60,20,238·00

Welfare Work	4,90,028·00
Repairs and maintenance of buildings	12,48,142·00
Gold realisation charges	1,24,373·00
Insurance	33,215·00
Rents and Cesses	23,506·00
Rates and Taxes	54,932·00
Stationery and Printing	1,05,769·00
Postages, cables, telephone charges, bank charges et	19,157·00
Water charges	3,93,941·00
Incidentals	3,89,440·00
Electricity Department	24,06,194·00
Medical Establishment	14,06,834·00
Central Administration	12,04,482·00
Watch & Ward Establishment	13,17,035·00
Consultants' Fees	5,34,309·00
Audit Fees	43,364·00

65. The management had valued gold at the I.M.F. rates and in the profit and loss statement the amount realized by sale of gold was shown to be at Rs. 247.36 lakhs. The unions have challenged the correctness of the rates at which the gold has been valued. However, I shall deal with the question about the price of the gold later on and I will first discuss the evidence to find whether the management have proved the correctness of the various entries on the debit side and whether in fact the total amount of cost is Rs. 558 lakhs.

66. It has been held by the Supreme Court in a number of cases that the correctness of the figures as shown in the balance sheet and profit and loss accounts statements must be established by proper evidence in Court by those who are responsible for preparing the document or by other competent witnesses. The unions have relied upon the ruling reported in 1960 1 LLJ page 548 (Petlad Turkey Red Dye Works Company Ltd., and Dyes Chemical Workers' Union and others) in which their Lordships have first discussed about the necessity of proof of a medical certificate and have observed:—

> "There is no reason why an exception should be made in the case of balance sheets prepared by companies for themselves. It has to be borne in mind that in many cases the directors of the companies may feel inclined to make incorrect statements in these balance sheets for ulterior purposes. While that is no reason to suspect every statement made in these balance sheets the position is clear that we cannot presume the statements made therein to be always correct. The burden is on the party who asserts a statement to be correct to prove the same by a relevant and acceptable evidence. The mere statement of the balance sheet is of no assistance to show therefore that any portion of the reserve was actually utilized as working capital. An audited balance sheet would show that certain statements are made but the mere fact that the statements are made could never be taken as proving the statements as correct."

67. In the ruling reported in the same volume at page 542 (Khandesh Spinning and Weaving Mills Company Ltd., and Rashtriya Girni Kamgar Sangh and others) their Lordships of the Supreme Court have specifically mentioned that the accounts of a company are prepared by the management. The balance sheet and profit and loss accounts are also prepared by the company's officers. The Labour have no concern in it. When so much depends on this items the principles of justice and equity demand that an industrial court should insist upon a clear proof of the same and also give a real and adequate opportunity to the labour to canvass the correctness of particulars furnished by the employer.

Revenue Expenditure

68. In support of their contentions the management have examined Shri R. Sreenivasan the Chief Accounts Officer of the Undertaking. He has prepared the balance sheet from the statements of expenditure submitted to him by the units. He had no personal knowledge about the items of expenditure. He has stated:—

> "At the time of preparing the balance sheet I have not gone through the items of expenditure but the statement is prepared from returns submitted to me by all the mines."

and the mere production of the profit and loss account and balance sheet and the statements made by the witness, I do not think, will be sufficient to prove the various items challenged by the unions. It cannot be presumed that the statements made in the balance sheet or the statements in the profit and loss account are correct. The burden of proof is on the party who asserts the statements to be correct and must prove the same by relevant and acceptable evidence. The witness has been cross-examined at great length. The management have also produced some statements of details and I shall discuss the evidence about the debit items alleged to have been wrongly charged to revenue or improperly included in the revenue expenditure or which have been twice covered and should be neither deducted from the total costs or added back to the profits while considering the question of surpuls for bonus.

69. (i) *Retiring Benefits to the extent of Rs. 16:02 lakhs.*—It will appear from the balance sheet exhibit E-7 that the management had shown a reserve of Rs. 26,39,234 as liability to employees on retirement. The unions have contended that the amounts paid towards service gratuity should have been paid out of this reserve. The management has wrongly charged this amount to revenue expenditure and that amount should be excluded from the costs. The witness has also deposed to this fact and stated:—

> "It is correct to say that I am debiting certain amounts besides the item of Rs. 26,39,234 towards the expenditure as retiring benefits during the period in question."

At the instance of the union the management has produced a statement exhibit W-7 showing an amount of Rs. 14,38,567 paid towards service gratuity, termination gratuity silicosis and workmen's compensation. However, a statement showing the split-up of the gratuities, compensation etc., produced on 18th August 1967 gives a different amount for the very items. There is a slight variation. The amounts are—

	Rs. lakhs
1. Service Gratuity	·55
2. Termination gratuity	7·21
3. Silicosis compensation	5·89
4. Workmen's compensation	2·37
	16·02

Shri R. Sreenivasan has admitted that these amounts paid have been charged by him to the revenue account. He has stated:—

> "For all these years from 1951 uptodate the payment towards service gratuity and silicosis compensation have been charged only to the revenue account and not to the reserve account and hence the total reserve figure is not reduced."

He further makes it clear:—

> "It is correct to say that this amount has been passed on to pay gratuity to the employees who would be discharged, retired or retrenched from time to time. I did not pay the amount of Rs. 14.38 lakhs as shown in the statement exhibit E-7 out of the service gratuity reserve because nothing was known as to whom and what amount had to be paid."

It is clear that the amount paid towards the two gratuities and compensations which should have been charged to the reserve have been paid out of the revenue of the year and the total cost shall have to be reduced by this amount of Rs. 16:02 lakhs..

70. (ii) *Donations*:—

The unions have further alleged that the management has given donations to the King's College, London, research grant to King's College and K.G.F. first-grade college and since these amounts have been paid out of the revenue expenses of the year they should be deducted. It appears from exhibits W-4, W-10 and

W-11 that the management had given the following donations, grants to schools etc.

Grants to schools, teachers etc.	Rs.	88,812 (Ex-W-4)
Donation to K.G.F. Sanitary Board medical institutions etc.	Rs.	5,337 (Ex-W-4)
Donation to K.G.F. First-grade college . . .	Rs.	1·33 lakhs (Ex-W-11)

It has come in evidence that there are frequent rock bursts in the mines and the management had to suffer heavy losses on that account. It also hampers the winning of gold. It appears that with a view to know the reasons and find a remedy the management might have paid the amount for research to the King's College. The K. G. F. Schools are situated in the vicinity and the sanitary board is also doing its work in the same area and these two donations which are less than a lakh of rupees cannot be said to be improperly made by the management which is a big establishment employing more than 13000 workers.

71. However, I do not think that the donation of Rs. 1.33 lakhs to the first grade college can be considered to be permissible. It is not possible for the boys of the workers' family to take advantage of the college institution. The workers are leading a hand to mouth life. They cannot meet both the ends and in their eye college education will be a luxury. Being a public college ordinarily it will be useful only to the students who generally come from the rich and advanced people and considering the circumstances in my opinion this donation of Rs. 1·33 lakhs should be deducted from the revenue expenses of the year.

72. (iii) *and* (iv) *Charges for experts officers' bungalow servants*:—

The unions have challenged the correctness of the entries of the amounts of Rs. 2,22,964 and Rs. 1,63,000 alleged to have been paid as wages to the servants allotted to the officers' bungalows, and it has been contended that the management has not proved that in fact such huge amounts have been paid and that it was not necessary for them to spend such huge amounts on servants of strangers. It appears from the profit and loss account exhibit E-7 that the management has paid Rs. 5.34.399 as consultants fees to the consulting engineers. It appears that the management took the help of some consultants in running the industry.

72-A. The profit and loss accounts statement shows that an amount of Rs. 332 lakhs and odd has been paid towards salaries, wages, gratuity and other benefits and while giving the break-up of this amount they have stated that an amount of Rs. 1.63 lakhs has been paid over bungalow servants. The Chief Accounts Officer in his cross-examination has admitted that this amount is spent over the consultants' servants. He has stated:—

> "The bungalow servants mentioned are the servants allotted to the consultants' bungalows and their wages are included in this item. The amount of Rs. 1,63,000 paid to bungalow servants in statement dated 18th August, 1967 refers to officers as per the contract of service to them. This item of Rs. 1.63,000 and item of Rs. 2.22,964 in statement No. 2 are included in the agreement and I shall produce the agreement."

It is also clear from this statement that the amount of Rs. 2,22,964 which has been mentioned against incidentals in W-11 the split up of which has been given in exhibit W-10 is spent over these officers.

73. I do not think that such huge amounts spent over the consulting engineers and officers can be said to be properly utilised for the production of gold and the workers should be made to suffer on their account. The management have contended that these amounts were spent in accordance with the agreements made with the consultants and officers. The workers have challenged these items under the so called agreements. Ordinarily a Tribunal will not interfere with such agreements or the discretions exercised by the management. However, the undertakings are departmentally run concerns I think the unions are justified in criticizing these items of expenses. The witness had agreed to produce the agreements. It is not known why these agreements have not been produced and it shall have to be held that the amounts of Rs. 1.63 lakhs and Rs. 2,22,964 have not been proved to have been properly utilized and these two items will be reduced from the costs.

74. (v) *Items considered twice.*—The unions have made a serious grievance about the method of accounting adopted by the management and have by their

reply application dated 6th May, 1968 it has been contended that they have not followed the principles of accounting and that the various items of capital expenditure have been included in the revenue expenditure, some are included twice and if these items are deducted there will be a profit. The management has contended that the items of expenditure are allocated towards revenue and capital expenses as per the cost code of the undertakings and the accounts are made in accordance with the same and there is no question of challenging the method. The cost code has been produced as exhibit W-5. It is a very sketchy book and it will be very difficult for a layman to determine correctly whether a particular item is capital expenditure or revenue expenditure. The unions have read certain paragraphs from the book on practical auditing and it cannot be disputed that by capital expenditure is meant all expenditure incurred for the purpose of acquiring assets of a parmanent nature by means of which to carry on the business or for the purpose of increasing the earning capacity of the business. It is also clear that revenue expenditure is all expenditure incurred in carrying on the business and in maintaining the capital assets in a state of efficiency. However, I do not think that I shall be justified in considering the question whether the cost code allocations are in accordance with the principles generally accepted or not. It is clear that the management have their own rules to decide the capital and revenue allocations and I shall discuss the correctness if any particular item challenged to have been wrongly included.

75. The management has contended that the cost of Rs. 558 lakhs arrived at in the profit and loss statement exhibit E-7 is arrived at after deducting the capital expenditure. It does not include any item of a capital nature nor does it include any amount twice over. However, the profit and loss account statement drawn by the management on the face of it supports the contention of the unions. I have already quoted the statement which will show that all the costs are first stated under the four headings with a total Rs. 569.73 lakhs and thereafter the Accounts Officer has given certain deductions under the column less expenditure incurred for the first of which is capital works showing an amount of Rs. 9,38,045 and the total of the five items in the column less is Rs. 109.52 lakhs. After deducting these five items they have shown the amount of Rs. 460.20 lakhs. When the Chief Accounts Officer was asked about the reason why he had deducted and added he has given a very amusing explanation. He has stated:—

> "I have not other specific reason except the one about proper presentation in better form to deduct and add the items under the same head in the revenue and profit and loss account exhibit E-7.

This cannot be accepted and the circumstance itself shows that the management does not treat these five items as expenses properly chargeable to revenue. It may be that the amounts might have been either utilised towards capital expenditure or might have been included in the total of the four items of costs and there is much substance in the contention of the unions that the management has not properly followed the principles of accountancy in maintaining the accounts. Surprisingly they have added these items of welfare work, repairs and maintenance of buildings gold realisation charges, watch and ward establishment over again. The explanation given by the management that this method has been followed for purposes of proper presentation does not at all stand to reason and when these items have been deducted from the total amount of revenue cost either because of their character as capital expenditure or previous inclusion in the four items I think it proper to accept the Union's contention that these very amounts which are included in the same heads and added should not be added again.

76. It is significant to note that the management has supplied their details for the item of welfare work of Rs. 4,90,228/- which is at exhibit W-4. This mentions an expenditure of an amount of Rs. 33,24,300/- under the head salaries allowances etc. The Chief Accounts Officer has in his deposition admitted:—

> "The item of Rs. 3,32,430/- first item from the last exhibit W-4 is included under salaries, wages, gratuity and other benefits etc. and also in the column contribution to provident fund and pension found and transferred to this account as shown under 'less.'....."

This also corroborated the union's contentions that some of the amounts from the other items and heads of the departments added subsequently are included in the total amount of the cost under the first four heads, consumption of stores, wages, contribution to provident fund etc., and the management thus had reduced the total cost by the items (1) welfare work..Rs. 3,39,772/- (2) repairs and maintenance..Rs. 12,48,134/- (3) gold realisation charges Rs. 6,866/- (4) watch and

ward establishment..Rs. 20.076/-. It will not be proper to allow the management to add these very amounts which are included in the amounts under the same heads welfare work, repairs and maintenance of buildings, gold realisation charges and watch and ward establishment. The total of the four items comes to—

Rs.
3,39,772
12,48,134
6,866
20,076
16,14,848

and the total cost will be reduced by this amount.

77. (vi) *Replacement cost of Rs.* 11,50,000.—The union have contended that the management have charged the capital expenditure to the revenue account and all these items have not been reduced from the total cost and one such item is Rs. 11,50,000/- which is in respect of replacement of plant and machinery. The management had denied these allegations and have stated that the amount is included in the total capital expenditure of Rs. 93 lakhs odd. However, it is clear from the evidence of the witness that this is not covered in the amount of the head capital expenditure. It is not in dispute that this amount is capital expenditure. Shri Sreenivasan has also stated:—

> "I consider the expenditure on works in progress as capital expenditure but the amount of Rs. 11.50 lakhs in exhibit E-7 is capital expenditure."

It is not in dispute that the management has charged this amount to the revenue account. The witness has further stated:—

> "It is correct to say that the amount of Rs. 93.38 lakhs and Rs. 11.50 lakhs in exhibit E-7 are charged by me to revenue account."

This itself proves that the amount of Rs. 11.50 lakhs is separate and it has been charged by the management to revenue account and the total cost shall have to be reduced by this amount.

78. (vii) *Shaft Sinking.*—The unions have contended that the cost of Rs. 24.24 lakhs required for shaft sinking is capital expenditure. The management had charged this amount to the revenue account and the same should be either deducted from the revenue costs or added to the profits while considering the available surplus. The management have argued that the amount is included in the capital expenditure of Rs. 93 lakhs and the same has been deducted and the amount is not wrongly charged to revenue.

79. The management have produced the details of the shaft sinking and it appears that they have incurred an expenditure of Rs. 24.24 lakhs as cost towards shaft sinking. However, except the word of the witness there is nothing to show that this amount has been included in the capital expenditure. The unions had asked for the split-up of the amount of Rs. 93 lakhs odd but the same has not been supplied. The witness himself has made inconsistent statements about the nature of this expenditure. According to him only the main shafts are charged to capital. He has stated:—

> "It is correct to say that the main shafts are charged to capital while all other shafts are charged to revenue. The main shaft may be underground or on the surface also. I shall not be able to give the details."

He has further stated:—

> "I agree with the statement to the extent that shaft sinking mainly for exploratory work will be capital but shaft sinking expenditure for winning the gold on reef will be revenue expenditure."

> "It is correct to say that in the cost code there is no such indication as shaft sinking for exploration and shaft sinking for winning gold. But the whole expenditure for sinking shafts will be termed as exploratory expenditure. It is correct to say that whether it is main shaft or other shaft the expenditure is expenditure incurred on new excavation and on machinery installed. It will also include wages on labour employed for that purpose.

Profit and loss account will include such items under the heading cost. Such items means shaft sinking."

80. This evidence clearly shows that according to the witness shaft sinking other than the main shaft is to be charged to revenue and he must have charged it to the revenue account. In his further cross-examination he has made it clear but has added that he has subsequently transferred this amount to capital. He has stated:—

"I have stated in the cross-examination by Shri Sachindranath that I have charged these items to revenue because it is initially charged to revenue account and subsequently transferred to capital account."

"I have charged this amount initially to revenue because the cost code does not say that the undertaking cannot charge it initially to revenue. I shall not be able to say on what date I have transferred these items to capital account.

Q. I put it to you that during the period of 16 months in question you had not transferred these items to capital?

A. It is not correct.

Q. Can you say from the record when the accounts were transferred?

A. I shall furnish the record."

Thus it was subsequently alleged that the management has transferred this amount from revenue account to the capital account and it is an after thought. The explanation for initially charging the amount to revenue does not stand to reason. They have not also produced the necessary entries in that respect and it is difficult to accept the contention that the amount was subsequently transferred. It is an item of capital expenditure and the total cost under revenue shall have to be reduced by this amount.

81. The unions have contended that the management have according to their profit and loss statement incurred a capital expenditure of Rs. 93 lakhs odd. However, the salary and wages paid to the workers carrying on this work of a capital nature are included in the total amount of Rs. 332 lakhs under the head salaries. The management has not deducted the amount of salaries and wages from this amount nor have they given the figure separately and so some percentage of this amount should be considered to be capital expenditure and the same should be deducted from the revenue costs or should be added to the profits. The unions have also invited my attention to the observations from the volume Practical Auditing by Walter W. Bigg, F.C.A., F.S.A.A. page 108 which says that sometimes capital is included in the revenue expenditure and the auditors should be particular. In this book it has been observed:—

"The allocation of expenditure as between capital and revenue calls for the auditor's careful examination. Where the expenditure is directly incurred for capital purposes, it can be vouched by the auditor in the course of his examination of the cash book or the Bought Journal and his duties in this connection have already been dealt with. In many cases however the expenditure takes the form of wages of workmen either wholly or partially employed on capital improvements and extensions but whose wages are included in the general wages account. Unless therefore a transfer is made from the wages account to the debit of the asset account concerned revenue will be charged with wages which may properly be capitalised. Before passing any such transfer the auditor should examine the basis upon which it has been calculated...."

82. Considering the evidnece in my opinion in the present case also such capital expenditure particularly in respect of wages has been included in the revenue expenditure and the same has not been deducted. In this connection the Chief Accounts Officer has stated:—

"The figure of Rs. 332 lakhs odd third item in costs will include wages of labour employed on capital works."

He has further stated:—

"I shall not be able to split the figure of Rs. 332 lakhs odd under the heading salaries etc., and be able to state what portion of it forms capital expenses."

In view of this situation and the admissions on the part of the management about the inclusion of some capital expenditure in this amount the unions are justified in contending that some part of it should be deducted from the revenue costs.

83. However, there is no evidence to find exactly what amount has been incurred as capital expenditure towards salary etc., but considering the huge amount of the figure of Rs. 93 lakhs as capital expenditure and the total amount of salary in my opinion 5 per cent of the costs towards salary wages etc., should be held to have been incurred for works of capital nature. The total amount of costs under the head salaries is Rs. 332 lakhs and 5 per cent of the same would be Rs. 16.6 lakhs and the revenue costs will have to be reduced by this amount.

84. In their profit and loss statement the management have taken the total cost of production at Rs. 558 lakhs and the same figure has been taken into consideration while preparing the available surplus statements exhibits E-9 and E-10. I have discussed the evidence about the various items alleged by the unions to have been wrongly included in the revenues expenditure and considering these items which were of a capital nature and which have been repeated and covered twice or which should not have been charged to revenue the total cost of Rs. 558.75 lakhs will be reduced by the following amounts:—

	Items	Amounts in lakhs of rupees
1.	Retirement benefits etc.	16·2
2.	Donations	1·33
3.	Charges for the experts and officers bungalow servants	1·63
		2·22
4.	Items taken twice over	16·14
5.	Rehabilitation	11·50
6.	Capital expenditure towards salaries etc.	16·6
7.	Shaft Sinking	24·24
		89·86

and on deducting this amount from the total of Rs. 558.75 lakhs the revenue expenditure of Rs. 558.75—89.86=Rs. 468.89 lakhs will be taken for calculating the gross profit.

Calculation of Available Surplus

85. The learned Counsel for the management has argued that the workers had raised the dispute about the bonus for the year 1953-54 and after the award in the reference the matter was pending in appeal before the Supreme Court at the time when the Mysore Government nationalised the industry. In that appeal proceeding Civil Appeal No. 648 of 1957 the Supreme Court passed an award in terms of the compromise and after this compromise award the available surplus was calculated according to the terms agreed. The management has prepared the calculations of the available surplus for the period taking both the I.M.F. rate and the Hutti rate of gold. These calculations of the available surplus have been made in accordance with the L.A.T. formula as per the terms of the compromise.

86. The two statements are produced as exhibits E-9 and E-10. In exhibit E-9 the price of gold and silver is calculated as per I.M.F. rate while in exhibit E-10 it has been calculated at the Hutti Mines rate. There is no other difference. The prior charges in both are the same. I have already quoted the statement of available surplus in Exhibit E-10 and it will appear from this statement that the management has claimed the following amounts as prior charges:—

	Rs. in lakhs
Statutory Depreciation	23·42
Additional provision for rehabilitation and normal development reserved	41·90
Interest on borrowings	16·85
Return on fixed capital	9·04
Return on reserves used as working capital	1·61
Royalty	32·38

and it has been contended that this statement has been made as per the agreement between the union and the management. The amount of rehabilitation is binding on the workers and as per this statement also there is a huge loss and there is no question of payment of bonus.

87. The unions have contended that the agreement which was entered into by the unions with the Mysore Government is not binding upon them. It has also expired and the management ought to have proved the prior charges in the proceedings if they wanted to claim the same for considering the question of bonus.

88. I have already stated that the dispute between the workers and the management in respect of bonus for the years 1953-1954 was pending before the Supreme Court in Civil Appeal No. 648 of 1957. Their Lordships of the Supreme Court remanded the case by their judgment dated 22nd May 1958 and thereafter the parties had compromised the dispute. The compromise agreement is included in Exhibit E-13 and the relevant portion from this agreement is as follows:—

> "It is therefore agreed between the parties that available surplus out of which bonus should be paid to the workmen should be calculated as follows:—
>
> (a) gross profits of each year will be arrived at after deducting from gross income revenue expenditure which includes royalty, additional royalty, contribution to Government, annual contribution to the pension fund and also staff provident fund;
>
> (b) Out of the gross profits will be deducted as prior charges—
>
> (i) income-tax and other taxes if any;
>
> (ii) an amount equal to the total depreciation that would be allowable under the provisions of the Income-tax Law;
>
> (iii) an amount equal to the difference between the actual capital expenditure and statutory depreciation as per (ii) above
>
> or
>
> 7½ per cent of the total revenue expenditure whichever is less as additional provision for rehabilitation;
>
> (iv) an amount equal to 6 per cent of the capital invested in the Undertakings; and
>
> (v) an amount equal to 2 per cent on reserves employed as working capital."

The Chief Accounts Officer has stated in his deposition that he has made the calculations of the available surplus according to the L.A.T. formula modified as per the terms of the compromise award passed by the Supreme Court and the question is whether the parties are bound by this agreement for the calculations of the available surplus for the period in question.

89. I have already stated that the dispute referred to the Supreme Court was in respect of the bonus for the year 1953 and 1954 and in the agreement it has been stated:—

> "The above method of calculating available surplus and the fixation of the amount to be distributed as bonus will be followed for the years 1953, 1954 and 1955 and the period from 1st January, 1956 to 28th November, 1956 the period during which the gold mines were under the management of the companies and for the subsequent years upto 31st March, 1961 by the Kolar Gold Mining Undertakings."

From this it is clear that the agreement was binding between the parties till the end of the financial year 1960-61. The present dispute is in respect of the bonus for the period 1st December, 1962 to 31st March, 1964. Clearly the agreement has expired and I do not think that the terms of this agreement are binding. The Mysore Government nationalised the undertakings in the year 1956 and thereafter had preferred the appeal and the question is whether the employers are entitled to get the prior charges as claimed in the calculations.

90. I shall first deal with the two important items of prior charges—the statutory depreciation and rehabilitation as the management has claimed these items on the strength of the above mentioned agreement by which the bonus dispute for the year 1953-54 was compromised. It is clear from the statement Exhibit E-10 by which the management has calculated the available surplus that they are claiming an amount of Rs. 23.42 lakhs as statutory depreciation and Rs. 41.90 lakhs as rehabilitation charges. It is also not in dispute that by this agreement which is dated 7th October, 1958 they were entitled to claim statutory depreciation which is the total depreciation that was allowable under the provisions of the Income-tax Act. It is not in dispute that the management has claimed this amount of Rs. 23.42 lakhs as statutory depreciation because of the agreement.

The agreement specifically mentions total depreciation allowable under the provisions of income-tax law. However, I do not think that the management can claim the statutory depreciation as a prior charge in the calculation of available surplus for the purposes of bonus. It is true that in some earlier rulings statutory depreciation had been allowed to be deducted as a prior charge. There was a conflict of decisions. But this confusion was set at rest by the decision of the Labour Appellate Tribunal in the case of Uttar Pradesh Electricity Company and its workmen 1955 II LLJ 431 and after the decisions of the Supreme Court in the Shree Meenakshi Mills case 1958 1 LLJ 239 and other cases it has been clearly established that it is the notional normal depreciation that should be allowed as prior charge in the calculations. In this ruling their Lordships have quoted the following observations from 1955 II LLJ 431 and have further observed:—

> "The initial depreciation and additional depreciation are in a sense abnormal additions to the income-tax depreciation and they are designed to meet particular contingencies and for a limited period. It would therefore not be fair to the workmen that these two depreciations are rated as prior charges before the available surplus is ascertained. It is likely that in many cases if these two depreciations are allowed as prior charges no surplus would be left even though workmen may have laboured during the year to the best of their ability and the concern was for all purposes prosperous."

Hence the provision for normal depreciation including multiple shift depreciation alone and not for additional or initial depreciation which form part of statutory depreciation should be made as a prior charge for the purpose of ascertaining the available surplus.

91. Their Lordships have later in the further, ruling also made it clear that statutory depreciation should not be allowed as prior charge. In the ruling reported in 1960 II LLJ page 88 Anil Starch Products and Ahmedabad Chemical Workers' Union and others it has been observed:—

> "Notional normal depreciation and not the full statutory depreciation held should be allowed as prior charge....."

In view of this legal position I do not think that the management can claim statutory depreciation of Rs. 23.42 lakhs as prior charge.

92. Moreover what is claimed in the profit and loss statement is the depreciation reserve and not depreciation and the witness speaks of it as contribution to the depreciation reserve. However, contribution to depreciation reserve and depreciation are two different things. This amount has not been shown in the balance sheet as an expenditure for the purpose of profit and it cannot be claimed as a prior charge.

93. It is significant to remember that when the undertakings were under the management of John Haylor & Sons and were governed by the Indian Companies Act the management used to show in the balance sheet the amounts of depreciation upto that date in respect of every item of the fixed assets. After nationalisation the management did not think it necessary to show the depreciation. They have only shown the depreciation on the items sold and from the record notional normal depreciation cannot be calculated. The learned Counsel Shri Rangaswamy Tyengar has argued that the present statutory depreciation is the same as normal depreciation. The Income-Tax Act does not use the words normal depreciation and what has been charged to the normal depreciation and the amount of Rs. 23.42 lakhs is a proper charge. Considering the evidence on record I do not find any substance in the argument. Firstly the agreement under which the management has prepared the available surplus statement itself permits under clause 7(b) (ii) the employers to charge total depreciation under the Income Tax Act. This total depreciation is known as statutory depreciation and the amount of Rs. 23.42 lakhs is the statutory depreciation.

94. It is clear from the deposition of the Chief Accounts Officer that the management has not calculated the notional normal depreciation. The Chief Accounts Officer has stated:—

> "I have not calculated the notional normal depreciation for the period in question while preparing Exhibit E-10. I have deducted the entire statutory depreciation from the rehabilitation charge."

In fact it is clear from the evidence of the Chief Accounts Officer that he has no idea about the notional normal depreciation for a particular period. He has

merely considered the provisions of the compromise agreement and calculated the amount of Rs. 23.42 lakhs. From his evidence it is clear that while preparing exhibit E-10 he had deducted this amount of Rs. 23.41 lakhs. The agreement clause 7(b)(iii) regarding rehabilitation refers to the statutory depreciation as per 7(b)(ii) to be deducted and it is clear that the amount of Rs. 23.42 lakhs is the statutory depreciation and it cannot be accepted that this amount is only the notional normal depreciation and the undertakings are not entitled to claim this amount.

95. This inference will be further corroborated from the circumstance that the amount of depreciation charged in the calculations of available surplus for the bonus year 1953-54 is almost the same. From the findings of Shri A. Das Gupta exhibit E-12 it will be seen that the learned Adjudicator has taken the amounts of Rs. 6.96, 8.28 and 7.18 is equal to 22.37 lakhs as depreciation. At that time depreciation was to be charged as per the provisions of the Income-Tax Act and it was the statutory depreciation. Considering this amount it cannot be said that the amount of Rs. 23.42 lakhs can be the notional normal depreciation and the contention raised at the time of arguments cannot be accepted and it shall have to be held that the management failed to prove the amount of depreciation.

96. It is significant to remember that in the case of an ordinary company there is generally the certificate of the Income-Tax Officer to prove the amount of the statutory depreciation. In the case of the undertakings there is no such certificate but a mere statement in the balance sheet and there is absolutely no proof about the depreciation of Rs. 23.42 lakhs and it shall have to be held that the management is not entitled to any amount as depreciation.

97. As regards the claim of the prior charge of Rs. 41.90 lakhs as additional provision for rehabilitation and normal development reserve this item is also claimed on the strength of the agreement and the management has not calculated it for the period in question. The Chief Accounts Officer has stated:—

> "Q. Have you taken the amount of Rs. 41.90 lakhs as rehabilitation reserve in exhibit E-9?
>
> A. This amount of Rs. 41.90 lakhs is allowed in the compromise award for claiming towards rehabilitation and normal development purposes. It was the compromise of the 1953-54 bonus claim and in that compromise this amount was allowed—and hence it is claimed for this period also."

He has further made it clear that the amount was not calculated:—

> "Q. Have you calculated any rehabilitation for the period in question.
>
> A. No."

98. The agreement exhibit E-13 clause 7(b) (iii) makes provision for calculating rehabilitation charges. The learned Counsel for the management Shri Iyengar has argued that the amount of capital expenditure incurred by the management during this period is about Rs. 73.20 lakhs and the difference between this amount and the statutory depreciation of Rs. 23.90 lakhs is about Rs. 51 lakhs but 7 per cent of the revenue expenditure of Rs. 588.77 lakhs alleged to have been incurred during the year comes to Rs. 41.90 lakhs which is less than the difference and hence as per the above clause the lesser amount has been claimed as rehabilitation charge. It has been further argued that during the proceedings of the bonus dispute for the year 1953-1954 the amount of rehabilitation charge fixed by the Central Government Industrial Tribunal was about Rs. 58 lakhs but with a view to benefit the workers an agreement was reached and the employers were entitled to claim the amount of Rs. 41.90 lakhs as prior charges towards rehabilitation.

99. The learned Counsel on behalf of the management has further argued that during the proceedings of the bonus dispute for the year 1953-54 the Central Government Industrial Tribunal fixed the amount of the charge of rehabilitation. The present agreement has been based on the strength of the findings of the Tribunal and once the rehabilitation charges are determined it is not necessary to assess them again every year and under the circumstances the management is entitled to claim rehabilitation charges of Rs. 41.90 lakhs. The learned Counsel has invited my attention to the ruling reported in 1961 1 LLJ 508 (Bombay Gas Co. Ltd., and its workmen) and 1964 1 LLJ page 370 (Burn & Co. Ltd., and their workmen).

In the first ruling it has been observed:—

"When the annual requirement for rehabilitation was calculated by the Industrial Tribunal adjudicating the bonus dispute between the parties the same amount minus the depreciation for the year in question must be allowed unless it is proved by the workmen that there has been change in the circumstances as for example fall in prices justifying reduction in the amount thus worked out or that the employer deliberately and without sufficient cause does not use the amount allotted to him for rehabilitation."

In the second ruling it has been observed:—

"There could be no doubt that once the question as to what is necessary for rehabilitation and over how many years it should be spread has been decided industrial adjudication after proper investigation and careful scrutiny of the evidence adduced in any one year the assessment thus made ought not to be lightly disturbed when the question comes up again in any future year in respect of rehabilitation. The very nature of the problem makes it necessary for industrial adjudication to project itself into the future and decide the total rehabilitation charges over the years and the number of years over which rehabilitation has to be spread."

100. Leaving aside for a while the question about the binding nature of the agreement I shall first discuss the evidence and the effect of the findings of the Central Government Industrial Tribunal Shri A. Das Gupta which is the basis of the agreement. It was contended that the agreement was entered into with a view to give some relief to the workers and the amount of the rehabilitation charge fixed by the Central Government Industrial Tribunal could not leave any available surplus. The findings of the Industrial Tribunal Shri A. Das Gupta on rehabilitation charges were given after the remand of the matter by the Supreme Court. After the findings were submitted the matter was pending before their Lordships of the Supreme Court but the appeal was not finally heard and the findings were not scrutinized in appeal as the parties settled their dispute by compromise. Consequently it has been contended by the unions that it cannot be said that rehabilitation charges have been decided by the Tribunal. The management has produced at exhibit E-12 the findings of Shri A. Das Gupta submitted in the appeal before their Lordships of the Supreme Court Civil Appeal No. 648 57 and the findings show that the learned Tribunal had come to the conclusion that the management was entitled to get rehabilitation charges of Rs. 19.16 lakhs, Rs. 18.94 lakhs and Rs. 20.56 lakhs = Rs. 58.66 lakhs.

101. The unions have serious grievance about the correctness of the findings of Shri A. Das Gupta. It has been contended that the various inflated and exaggerated figures and the amounts of price etc., were given the so-called experts who were the employees of the companies. They were interested and were not independent and the figures should not have been accepted. The unions had not properly taken part in the proceedings and the witnesses were not cross-examined. Due to financial difficulties the unions could not afford litigation with the management under whom they had to serve. The unions had not taken inspection of either the vouchers or registers or inventories. They had not also accepted the figures and the learned Tribunal had wrongly taken the multipliers and divisors and the figures were one-sided and arbitrary.

102. Shri K. P. Sachindranath on behalf of the unions has invited my attention to the following observations of the Hon'ble Supreme Court reported in 1959 1 LLJ 644 (Associated Cement Companies Ltd., and their workmen):—

"In dealing with the employer's claim for rehabilitation tribunals have always placed the onus of proof on the employer. He has to prove the price of the plant and machinery, its age the period during which it requires replacement the cost of replacement.....

In calculating the rehabilitation amount the tribunals may take his conduct into account in determining the actual allowance of rehabilitation to him.

It is necessary that the tribunal should require the employer to give clear and satisfactory evidence about all the relevant facts on which it can make the requisite estimate. The questions which the Tribunal has to consider under this item are essentially questions of fact and its final decision on them is bound to be hypothetical since it would be based on a fair evaluation of several circumstances which

are by no means certain and which cannot be predicated with any amount of precision or even definiteness. That is why it is of the utmost importance that all relevant and material evidence should be adduced by the employer and it should be properly tested by cross-examination. When that is done, the tribunal must do its best to consider the said evidence objectively and reach its final decision in a judicial manner.

Further in dealing with the problem of rehabilitation the tribunal must carefully examine the evidence and consider the employer's claim in all its aspects before determining the amount which should claim allowed by way of rehabilitation as a prior charge in the relevant year."

103. I do not think it proper or necessary to enter into the question about the correctness or validity of the findings given by Shri A. Das Gupta, C.G.I.T. in the bonus proceedings. It shall have to be remembered that the C.G.I.T. was directed by the Hon'ble Supreme Court to record evidence and submit the findings. In the judgment of the Supreme Court exhibit E-11 it is observed:—

"We desire that this appeal should be finally disposed of as soon as possible; so we direct that the tribunal should submit its findings along with the evidence to be recorded hereafter to this Court within three months from today."

In accordance with this direction the learned Tribunal had recorded the evidence and submitted the findings.

104. It is significant to remember that the learned Counsel was not directed to dispose of the proceedings by passing a final award and had the findings been accepted by the Supreme Court then they would have been binding on the parties and in view of the abortive nature of the proceedings it cannot be said that the amounts of rehabilitation charges stated in annexure 1 as Rs. 19.16 lakhs, 18.94 lakhs and 20.56 lakhs have been calculated by the Industrial Tribunal adjudicating the bonus dispute and the rulings will not be applicable. The prior charge of rehabilitation cannot be said to have been adjudicated after proper investigation and there is no question of lightly disturbing the assessment made in the proceeding.

105. Moreover after these findings the parties themselves thought it proper to keep them aside and settle the dispute by amicable settlement out of Court and the management cannot rely upon these findings for determining the amount of the prior charge.

106. The learned Counsel for the management has argued that the workmen had agreed to the formula for calculating the available surplus and the employers had accepted the same in the interest of the workers as there would have remained no available surplus if the amount of rehabilitation decided by the Tribunal would have been taken into account as a prior charge, and the amount of Rs. 41·90 lakhs which is calculated on the basis of the lesser item between (1) the difference between the actual capital expenditure and statutory depreciation or (2) 7 per cent. of the total revenue expenditure, it is a reasonable charge and the employers are entitled to get the same. However, considering the terms of the agreement I do not find any substance in this argument also and I do not think that the management was very liberal towards the workers in agreeing to the formula incorporated in the agreement.

107. Rehabilitation charge has been agreed to under clause 7(b)(iii) of exhibit E-13 which provides for two alternative methods of calculations and the clause lays down that the amount which is less will be charged. However, if we carefully consider the effect of this clause we will find that the amount of rehabilitation charge has been made dependent on two variable items viz., capital expenditure and revenue expenditure. The management may in any year incur a large amount towards these items and consequently the amount of rehabilitation charge will increase and may exceed even the amount found and submitted by the learned Tribunal.

108. It is significant to note that though in annexure 1 of the findings the learned Tribunal has given the rehabilitation charges at 19.16 18.94 and 20.56 = 58.66 lakhs it is clear from the finding itself that the amount is less. In paragraph 40 of its findings the learned Tribunal has observed:—

"I have indicated in annexure 1 that the annual burden for the requirements for rehabilitation replacement and modernization on the revenue of the three mines would be respectively Rs. 19.16 18.94 and 20.56 lakhs when the total cost for rehabilitation etc., in respect of

the corresponding mines are Rs. 483.2, Rs. 518 and Rs. 476.4 lacs. Now that the total requirements are found to be Rs. 451.8, 481.4 and 441.1 lacs the annual burden on the revenue of the corresponding mine would be Rs. 17.91 Rs. 17.60 and Rs. 19.04 lacs which comes to 54.55."

The learned Judge had calculated the amounts of rehabilitation charges for the year by reducing this amount by the amount of statutory depreciation and in the same paragraph observed:—

"Out of this amount Shri Pillai has allowed statutory depreciation of Rs. 6.96, Rs. 8.23 and Rs. 7.18. The balance of Rs. 10.95, Rs. 9.37 and Rs. 11.86 lacs has got to be provided for out of the revenue as a prior charge which comes to Rs. 32.18".

Had the findings been kept up and been applicable to the year in question as the amount of statutory depreciation i.e. Rs. 23.00 lakhs is almost the same the amount of rehabilitation charges of Rs. 32.18 would have been required to be provided for. However by the agreement which is alleged to be in the interests of the workmen the management is claiming Rs. 41.90 lakhs and I do not find any substance in the contention about liberal attitude and the benefit to the workers.

109. It is true that the unions had agreed to the method of calculating the available surplus as stated in the compromise. However, it is not in dispute that this agreement is not now in force. I have already quoted the relevant portion from the agreement. The agreement has already expired and the workers are in my opinion within their rights to say that the management ought to have led evidence to determine the amount of rehabilitation charges. It is clear from the evidence that the management has calculated the amount of Rs. 41.90 lakhs only on the basis of the agreement. They have not led any evidence. It is only in the cross-examination of EW-1 the Chief Accounts Officer of the Undertakings it has come on record that the management has incurred an expenditure of Rs. 11.50 lakhs for replacement of plant and machinery. The management has also stated in exhibit E-37 that the amount of Rs. 11.50 lakhs has been spent towards replacement of plant and machinery. In the previous award between the same parties when the workmen had raised a dispute about bonus for the year 1952 the learned Tribunal Shri Salim M. Merchant had awarded the actual expenditure on rehabilitation charge and at the most it can be stated that the management is entitled to claim this amount of Rs. 11.50 lakhs as rehabilitation charge.

110. It is not known why the management did not think of leading evidence to prove this claim. The agreement stated that the terms will be revised after 31st March 1961. The present claim for bonus is for the period from 1st December, 1962 onwards and it was necessary on the part of the management to lead evidence to prove the rehabilitation charges. It is significant to remember that the amount of rehabilitation charge was fixed for the bonus year 1953-54 that is for a period before about 9 years and it is not known what plant and machinery has been scrapped and what additions have been made. The management of the undertakings have changed hands and after the undertakings are taken over by the Central Government there are important changes in respect of the finances. It is not in dispute that after the undertaking was taken over it is not required to pay any income-tax charges. The management is also entitled to charge only the notional normal depreciation and not the statutory depreciation. The position of reserves has also undergone a change and there should have been a fresh calculation of rehabilitation charge.

111. It will appear from the balance sheets for the period 1st January 1956 to 28th November 1956 that the companies had passed on the reserves to the Mysore Government and even at the time of the acquisition of these undertakings by the Central Government the same reserves had been passed on to the Central Government. The balance sheet of the undertakings for the period 1st April 1962 to 30th November 1962 will show that at the end of that period the reserves were—

	Rs.
(1) Capital reserve	3,40,58,482
(2) Depreciation reserve	86,96,151
(3) Termination gratuity etc.	26,39,234
(4) Rehabilitation and normal development reserve	9,58,577
(5) Amenities fund reserve for housing schemes	4,00,000

In view of reserves & Nos. 2 and 4 it can be legitimately stated that the management had got these amounts with them for the purpose of rehabilitation and there is much force in the contention of the unions that the claim for rehabilitation should have been investigated and the management ought to have proved the same and it should not be allowed.

112. Even if an amount of rehabilitation charge has been fixed for a particular year due to lapse of period and change of circumstances it is necessary to calculate the amount with necessary adjustments every year. It has been observed in the ruling reported in 1959 1 LLJ: 644:—

> "Before actually awarding an appropriate amount in respect of rehabilitation for the bonus year certain deductions have to be made on account of the break-down value of the plant and machinery which is usually calculated at the rate of 5 per cent of the cost price of the block in question. Then the depreciation and general liquid reserves available to the employer are deducted. The reserves which have already been reasonably earmarked for specific purposes of the industry are however not taken into account in this connection. Last of all the rehabilitation account which may have been allowed to the employer in previous year would also have to be deducted if it appears that the amount was available at the time when it was awarded in the past and that it had not been used for rehabilitation purposes in the meanwhile. These are the broad features of the steps which have to be taken in deciding the employer's claim for rehabilitation under the working of the formula."

It has been also observed in the ruling reported in 1963 II LLJ page 358 (Bengal Kagazkal Mazdoor Union and others and Titagarh Paper Mills Company Ltd., and others):—

> "In calculating the rehabilitation charge for the year in question the rehabilitation amounts allowed in the past years and remaining unused in the meantime must be taken into account."

For these reasons also I think the management is not entitled to claim rehabilitation charges of Rs. 41·90 lakhs as alleged.

113. It appears that the management has for the purpose of proving the prior charges of depreciation and the rehabilitation solely relied upon the compromise agreement in the bonus dispute of the year 1953:54. The Chief Accounts Officer has stated:—

> "I am aware that the compromise award expired in 1962 and is not applicable to this period. I have taken the 7½ per cent as rehabilitation claim because the learned Tribunal Shri A. Das Gupta had calculated the amount for claim towards this expenditure and the calculation holds good for twenty years. I am not aware that the award of Shri A. Das Gupta is not applicable to this case. I have not looked to any other documents except the compromise award for arriving at the rehabilitation charge. I have taken into consideration the depreciation reserve while arriving at the rehabilitation charge. I have deducted the depreciation reserve from the rehabilitation charge. I have deducted Rs. 23·42 lakhs. I have deducted the whole of the amount of statutory depreciation."

In the present proceedings we are required to decide the question about the claim for bonus for the period 1st December, 1962, to 31st March, 1964, that is for a period of sixteen months and it was necessary for the management to have proved the rehabilitation charges for the period in question. The amount of Rs. 11·50 lakhs expended for replacement has also come in cross-examination and the management has not given any evidence. When the unions contended that there was absolutely no proof about the amounts for these charges I had specifically asked Shri Iyengar about the evidence and proof regarding these charges and Shri Iyengar submitted that the management had led sufficient evidence to prove the charges. He added that the management had anticipated all these arguments and their case rested on the evidence produced. According to him the management has established the amounts of these charges. However, in my opinion the management has not proved that they are entitled to claim the amount of Rs. 23·41 and Rs. 41·90 lakhs as depreciation and rehabilitation charges respectively. It does not mean that there may have been no depreciation in machinery and the claim for rehabilitation and development reserve is baseless. However, when the management has not led proper evidence I do not think that there is any other course left to the Tribunal but to reject their claim except the amount of Rs. 11.50 lakhs actually spent for replacement.

114. It will appear from the available surplus calculations statement marked exhibit E-10 that the management has claimed interest of Rs. 16·85 lakhs on the

borrowing, return of Rs. 9·04 on the fixed capital of Rs. 301 lakhs and return of Rs. 1.61 lakhs on reserves used as working capital at 2 per cent. Thus they claim total amount of Rs. 16.85+9.04+1.61=27.50 lakhs. The unions have contended that the capital structure of the undertakings is quite different from that of the establishments governed by the Companies Act. There is no fixed share capital. Originally the companies had a fixed share capital of Rs. 164 lakhs. The Mysore Government as well as the Central Government took over the undertakings as going concerns. What they have paid to the seller is compensation and the fixed capital of the undertaking is the same amount of Rs. 164 lakhs.

115. It has been further contended that there is absolutely no proof that the undertakings had any cash amount of reserves with them and that they have utilised that amount of reserves as working capital. The reserves were locked up with the State Government. There was no cash in hand and no question of using reserve as capital and they are not entitled to claim any return on the reserve. It is not in dispute that the undertaking have no fixed share capital. In the balance sheet they have used the word "Government Capital" of Rs. 311 lakhs odd which is in fact the compensation paid to the Mysore Government. It is also clear that the Full Bench formula permits 6 per cent return on the share capital. The amount of Rs. 301 lakhs is compensation and if at all under the formula any claim of return is to be considered it can be considered only in respect of Rs. 164 lakhs. Considering the principles of accountancy and the taking over of the concerns there is much force in the arguments advanced by the unions. But it cannot be ignored that after the undertakings were taken over by the Mysore Government and the Central Government they are not govered by the Companies Act. It is almost a proprietory concern of the Central Government and as per the principles on which the Labour Appellate Tribunal formula is based the management will be entitled to claim return on the capital invested and utilised in running the business.

116. However, it is clear from the evidence of the Chief Accounts Officer that this amount of interest claimed by the management in the statement exhibit E-10 has been claimed at the rate of 6 per cent. He has stated:—

> "The interest has been charged at 6 per cent both on the fixed capital that is compensation and also the working capital as per the compromise award."

Shri Sachindranath on behalf of the unions has argued that the undertakings have not paid a single pie as interest while the management has claimed and shown large amount of interest in the statement E-10 of calculation of available surplus. Even the profit and loss statement gives a different amount and as the management is not required to pay interest they are not entitled to claim any interest as a prior charge against the workers. The evidence of the Chief Accounts Officer in my opinion supports the unions. The witness has stated:

> "Q. Is the amount of Rs. 9·04 lakhs included in the amount of Rs. 16·85 lakhs in exhibit E-10.
>
> A. The exact amount of Rs. 9·04 lakhs is not included in the amount of Rs. 16·85 lakhs. I shall give the figure as to what part of it is included in Rs 16·85 lakhs.
>
> Q. Have you shown the amount of Rs. 16·85 lakhs in the printed profit and loss account exhibit E-7?
>
> A. I have not shown the exact amount. A part of it is included in Rs. 16·85 lakhs. The witness volunteers the rate at which this interest is calculated in the profit and loss account is according to the instructions of the Government and the rate given by them while the rate at which the interest calculated for the available surplus is at 6 per cent.
>
> Q. You will agree that the figure of Rs. 16·85 lakhs interest on borrowings is not an actual interest paid towards that item?
>
> A. I agree."

This evidence leaves no doubt that the undertakings have not paid any interest. They have calculated the return on capital at 6 per cent as per the agreement. However, I do not think they can claim interest at such a high rate simply because of the expired agreement. It is clear from the profit and loss statement that the total amount of interest claimed by them is only Rs. 16,24,941

and I do not think that the management will be entitled to claim anything more than this amount and the amount will be taken as a prior charge.

117. The management has also claimed an amount of Rs. 32.33 lakhs as royalty which is required to be paid to the Mysore Government. The union have contended that this royalty has been calculate on the rate of gold which has been taken into consideration by the Hutti mines for paying royalty. The management has valued gold in their balance sheet at the I.M.F. rate and the royalty should be calculated at that rate. Shri Thimmayya on behalf of the unions raised a strong objection to this claim by the management and has argued that royalty is to be paid by the subject to the King. Now Parliament is the owner and there can be no charge of royalty and this claim should be rejected. It is not in dispute that royalty is being paid according to the rules framed under the Mines and Minerals Act. The two Governments have agreed for the payment of royalty at this rate and I do not think that the unions can validly dispute the correctness of this amount. The undertaking for winning the gold have to pay royalty to the State and this amount of Rs. 32·38 lakhs has been properly charged and the management will be entitled to claim the amount from the profits.

118. Shri Rangaswamy Iyengar on behalf of the management has at the time of argument contended that the unions have by their statement of claim admitted the items of the amount of costs depreciation, returns on capital, reserves etc., and now it would not lie in their mouth to say that the figures stated in the profit and loss statement and the calculations are incorrect. I do not think that the written statements can be considered on the same footing as pleadings in Civil Courts. In fact the unions have not stated the figures in their written statements but some figures are mentioned in their estimate statement which is guess work. They have taken the figures from the statements of the management and I do not think the statements can be considered as admissions on their part. Moreover, if the figures which they have stated are to be accepted the whole statement shall have to be considered. The books of accounts are in the custody of the undertakings. The workers can have no knowledge about the details and I do not think that the items stated in the statements can be considered as admissions. It is significant to remember that the workers have by their application dated 8th May, 1969, specifically requested the Tribunal to direct the management to produce the witness the Chief Accounts Officer for cross-examining him on the point of statutory depreciation and rehabilitation. This application was opposed on the contention that the unions had ample opportunity. It was not contended that the depreciation was admitted. This application was granted and the witness was cross-examined and the suggestion that because of the evidence they did not produce any evidence is an after thought and cannot be accepted.

Valuation of Gold Produced

119. During the period in question the undertakings have produced gold of the total quantity of Ex. 4599432 grams and some quantity of silver. In the profit and loss statement the management has shown the amount of sale of gold and silver at Rs. 248 lakhs. In this statement there is a footnote which reads:—

> "As the entire gold produced by the undertaking is taken over by Government at the International Monetary Fund rate the revenue and profit and loss account shown above represents the Net Loss in winning Kolar Gold at the International Monetary Fund Rate."

In the statement of available surplus exhibit E-9 the management has taken the I.M.F. rate and shown the total receipts at Rs. 271 lakhs while in a similar statement exhibit E-10 in which the gold is alleged to have been valued at the Hutti Mine average rate the total receipts are shown at Rs. 518.34 lakhs.

120. Shri Rangaswamy Iyengar on behalf of the management has argued that even if the I.M.F. rate for the valuation of gold is discarded as too low the Hutti rate of gold is the market rate. The royalty paid by the undertakings to the Mysore Government is also calculated on the basis of the Hutti rate and even if the gold produced is valued at that rate as the cost of production is Rs. 558 lakhs which far exceeds the value of the gold the workmen will not be entitled to claim bonus.

121. The unions have contended that the L.A.T. formula is not applicable to the present undertakings and even if it be held that the L.A.T. formula should be applied it is necessary to value the gold at the market rate for finding the profit. Neither the I.M.F. rate nor the Hutti rate will be relevant and if the gold is valued

at the market rate there will be surplus and the workmen will be entitled to get bonus. The union's witness has stated that the market price of gold is Rs. 130 per 10 gms and the total value would be about Rs. 897 lakhs and the question is what should be the reasonable value of the gold produced by the undertakings.

International Monetary Fund Rate

122. In the balance sheet of the management the price of gold has been calculated at the I.M.F. rate of Rs. 53·58 for 10 gms and considering the production cost of Rs. 130 per 10 gms the I.M.F. rate is too low. If any industry is to be run on commercial lines the products will be sold in the open market and the profits will be calculated on that basis and I do not think that the valuation of the gold produced by the undertaking at the I.M.F. rate will give any correct idea about the results of the financial condition of the undertaking. The I.M.F. rate has been fixed by world countries which are predominantly gold producing countries. The fixing of it has got also political reasons. It is fixed by countries who as a matter of policy give subsidies to the industry to a great extent. The I.M.F. rate has been fixed in the year 1936 and in my opinion it has no relevance for valuing the gold for the purpose of bonus.

Hutti Mine Rate

123. As regards the Hutti Mines rate the management has contended that the Hutti Mines rate is the market rate and the valuation of the gold at its average rate which is Rs. 107·48 per 10 gms comes to Rs. 495 lakhs. This rate is reasonable and it should be accepted for the purposes of bonus calculations. It has been further argued that even the royalty is paid on the basis or this rate and the two Governments have agreed to it.

124. In further support of this contention the Chief Accounts Officer has stated in his deposition that the Hutti price is the market price. However, if we scrutinize the evidence of this witness it will appear that he has no idea about the market price. It is not in dispute that the Hutti mines are permitted to sell gold to industrial consumers and the witness has stated:—

> "I am aware that Hutti gold mines supply gold to industrialists. I am not aware if Hutti mines were supplying low carat gold to industrialists. We were supplying to the Mint the gold as was produced in our mines."

He has further stated:—

> "Prior to 1958 the gold produced was sold in open market and subsequently it was taken over by the Government. I do not know if this is the position in respect of the gold produced by the Hutti Gold Mining Company. I am not aware if the open market gold price is much higher than the Hutti Gold Mines gold price."

In view of this evidence the contention of the management that the Hutti price is the market price cannot be accepted.

124-A It has come in evidence that the Hutti Mines are permitted to sell gold to industrial consumers and Shri Thimmayya on behalf of the unions have argued that the Hutti Mines gold rate is not also relevant for the purposes of the calculations of available surplus as it is not the rate of a free market and is not subject to the economic laws of supply and demand. It is not in dispute that the gold produced by the Hutti Mines is sold by the undertakings to licence holders through the State Bank of India. It is also clear from the correspondence between the Mysore Government and the Central Government that the rate at which gold is sold is required to be approved by the Gold Control Board or Administration and there is much force in the arguments that it is not the rate of free market. Leaving aside this factor out of consideration and if it is decided to consider the Hutti mines rate for the purpose of calculating the available surplus I do not think that the management has proved that the Hutti Mines average price of gold was Rs. 107·48 per 10 gms during the period in question. The learned Counsel has argued that there was correspondence between the Central Government and the State Government for determining the amount of royalty which was agreed to be paid on the basis of the Hutti Mines gold rate. The management has produced these letters at exhibits E-5 and E-6. It has been contended that these documents establish that the average price of Hutti gold during the period was Rs. 107·48 for 10 gms.

125. I have gone through these letters exhibits E-5 and E-6 and I do not think that these letters were produced for proving the gold rate. Secondly the figures mentioned in these documents also do not prove the rate. Out of these two letters exhibit E-6 dated 6th April 1965 mentions the rate of gold for only six months from December 1962 to May 1963 and the average of these six months also is not Rs. 107·48 but is Rs. 107·12. However, there are no rates for the remaining months in this letter. As regards letter E-5 dated 15th August, 1964, it mentions the prices for five quarters the last two quarters being quarter ending June 1964 and September 1964. As the bonus period is upto 31st March 1964 the prices in the last two quarters will be of no use.

126. The remaining three quarters are quarter ending August 1963, November, 1963 and the four months ending March, 1964 and in this document there are no prices for the period before the quarter ending August, 1963. If we take the average of these three quarterly prices it will come to Rs. 107.9 and if the rate is calculated from both exhibits E-5 and E-6 it will be Rs. 107.5 and it is not known from what evidence the management has calculated the rate of Rs. 107.48 as average for the 16 months. It is significant to remember that the total production of gold during the period is roughly about 46 lakhs grams and even a small mistake leading to a difference of Re. 1 in the price of 10 gms will make a difference of Rs. 4.6 lakhs in the total and considering the importance and the correctness of the rate for the purpose of arriving at the total receipts it was necessary on the part of the management to lead proper evidence from the management of the Hutti mines themselves and it shall have to be held that the management has failed to prove that the average rate of Hutti gold during the period as Rs. 107.48 and the valuation made by them in exhibit E-10 cannot be accepted.

Reserve Bank Rate

127. At the time of the arguments Shri K. P. Sachindranath on behalf of the unions has also referred to the Annual Numbers of the 'COMMERCE' in which there was a review of the gold prices and had also invited my attention to the Report on Currency and Finance issued by the Reserve Bank of India for the year 1963-64 which mentions in statement No. 13 the average price of gold at Rs. 117.71 during the year 1962-63 and Rs. 111.98 during the year 1963-64. Shri Iyengar had also produced the report. These prices in the report have been quoted by the Reserve Bank and have not been challenged. I think it proper to consider these rates and I shall try to find the value of the gold produced at these rates.

128. The bonus dispute is for the period from 1st December, 1962 to 31st March, 1964, which is a period of 16 months. It is also clear that the first four months of the period are from the financial year 1962-63 and the rate of Rs. 117.71 will be taken for evaluating the gold produced during those four months. The balance sheet does not mention the monthly production and for the purposes of rough calculations it can be presumed that the undertaking has produced during the four months from December, 1962 to March, 1963 one fourth of the total gold i.e., 1,149.858 grams and the three fourth balance 3,449.574 for the remaining period. The valuation of the 1/4th production at the average rate of Rs. 117.71 will come to Rs. 1,35.34.978 and the valuation of the remaining three fourth at the rate of Rs. 111 98 would be Rs 3.86.28.329 and thus the total valuation will be Rs. 521.63 lakhs and together with the other receipts the total will be Rs. 544.96.

Rate given by the Unions' witness

129. The unions have examined Shri Parameswara Iyer who is a qualified accountant and has worked as such for about 30 years and has audited many companies' accounts as internal auditor. He has passed the Mysore Government Commercial Examination in Accountancy and Audit Diploma in 1960. He has prepared a statement of available surplus which has been produced at exhibit W-10. He has stated that he has taken the price of gold during the period in question at the rate of Rs. 130 for 10 gms and the market price of sovereign at that time was more or less the same. In his cross-examination he had stated that he himself had purchased gold at the rate of Rs. 130 per 10 gms and according to this rate the valuation of the total production would be about Rs. 597.92 lakhs. The witness Shri Rajagopal an office bearer of the union has also stated that the gold price during the period was Rs. 130 for one sovereign. It is true that these witnesses have not produced any documentary evidence or the receipts about the purchase of the gold. However, that would not mean that they are giving false evidence in respect of the rate.

130. It is true that transactions in pure gold have been prohibited and whatever these witnesses have purchased can be said to be illegal dealings and I do not think that this rate can be considered for the purposes of calculating the available surplus. It is not expected of the undertakings to sell gold in breach of the provisions of law. Under these circumstances I think the rates which are published by the Reserve Bank of India in its bulletins can be considered as officially correct rates and on the basis of these rates I think it proper to assess the value of the gold produced at Rs. 5,21,63,307 and together with the silver and sundry items the total receipts would be Rs. 544.96 lakhs and I shall try to apply the Full Bench formula to find the position about available surplus.

131. I have discussed the evidence about revenue expenditure the value of gold and the amounts of prior charges required under the formula of the Full Bench and taking the various rates of gold if the available surplus is calculated applying the provisions of the Full Bench formula the result will be as follows:—

(1) Taking the I.M.F. rate there will be a deficit of Rs. 258.01 lakhs as follows:—

	Rs. in lakhs
Gold and silver and sundry receipts	271
Deduct revenue expenditure (Costs)	468·89
Gross loss	—197·89
Rehabilitation	—11·50
Return on capital etc.	—16·24
Royalty	—32·38
	—258·01

(2) According to the Hutti Gold price there will be a deficit of Rs. 10·67 lakhs as follows:—

	Rs. in lakhs	
Gold and silver and sundry receipts		518·34
Deduct revenue expenditure (costs)		468·89
Gross Profit		49·45
	Rs. in lakhs	
Deduct rehabilitation	11·50	
Return on capital etc.	16·24	
Royalty	32·38	
	60·12	—60·12
		—10·67

(3) According to the Reserve Bank of India Bulletin rate there will be a surplus of Rs. 16·63 lakhs.

	Rs. in lakhs	
Gold and silver and sundry receipts		545·64
Deduct revenue expenditure (Costs)		469·89
		76·75
	Rs. in lakhs	
Deduct rehabilitation	11·50	
Deduct return on capital etc.	16·24	
Deduct Royalty	32·38	
	60·12	60·12
		+16·63

Whether the Full Bench Formula is Applicable

132. In view of the above calculation according to the Full Bench formula there is no available surplus sufficient to be distributed amoung the three parties and it shall have to be held that the second condition *viz.*, industry making profits for granting bonus has not been satisfied. The learned Counsel Shri Rangaswamy

Iyengar on behalf of the management has argued that when the formula shows no profits the demand of the workers for bonus has no justification and this Tribunal has no power to pass an award granting bonus. The unions have contended that there will be some surplus if the improper debits are made good at least there will be no loss—even if it be held that there is no available surplus according to the bonus formula as the formula is not applicable to the K.G.M. Undertakings there is no question of this Tribunal being powerless for awarding bonus if the Tribunal thinks that the labour has contributed to the prosperity of the industry and the further question is whether the Full Bench formula is applicable to the facts of this case. It has been further argued that the Legislature has accepted and recommended the principle of minimum bonus even if there is no profit and the workers are entitled to claim bonus. Leaving aside the contentions about grant of minimum bonus I shall first consider the question whether the Full Bench formula is applicable in this case.

133. I have already quoted the observations of their Lordships of the Supreme Court from the ruling reported in 1959 1 LLJ page 644 The Associated Cement Cos. Ltd. *v.* its workmen in which it has been observed:—

> "The working of the formula begins with the figure of gross profits taken from the profit and loss account which are arrived at after payment of wages etc."

This itself will show that the formula will be applicable only when the concern is capable of earning profits. There can be profits only when the management runs the industry with a motive to earn profits. It is common knowledge that any manufacturer or industrialist after determining the cost price of the end product puts some profit and determines the selling price. The amount of profits depends upon the sale, the quality of the goods the competency of the in managing economica ly co-operation of the workers, market fluctuations and various other factors. When the undertakings were managed by the K.G.F. companies till the year 1956 clearly they were running the industry with the motive to earn profits. After nationalisation of the industry by the Mysore Government the gold produced was sold in the open marke, but after the undertakings are taken over by the Central Government the gold produced is not sold. I have already quoted the foot-note in the revenue and profit and loss account statement wh.ch state that the entire gold produced has been taken over by the Government at the international monetary fund rate. Thus it is clear that there is no sale and there can be no question of profit or loss.

134. It is significant to remember that if the gold is valued at the I.M.F. rate the available surplus as per the formula would be minus 208.01 and if the Hutti rate is taken the available surplus will be minus 10.67 and taking the gold prices published by the Reserve Bank of India in its bulletins the available surplus will be Rs. 16.63 lakhs and if the rate stated by W Exhibit W 10 Statement is considered the unions there will be an available surplus Rs. 92.92 lakhs. It is further significant to note that the management has accepted the I.M.F. rate for the purpose of the balance sheet and profit and loss statement to be submitted before Parliament and for the purposes of paying Royalty to the Mysore Government they have accepted the Hutti Mines rate. So there is no uniformity about the rates. This clearly shows that though it is stated that the undertaking are run by the department on commercial lines in fact they are not commercially run for the purposes of profit and there is much force in the contentions of the unions that the Full Bench formula will not be applicable to the facts of this case. This inference will be further corroborated from the circumstance that the Central Government while acquiring the undertakings have not also fixed the price as would have been done by businessmen and it shows that the question of profit or loss is out the mind of the management in acquiring and running these mines.

135. The contention that the formula will not be applicable to the facts of the case will be further supported from the fact that neither the balance sheet nor the profit and loss statements are required to be drawn in accordance with the provisions or principles of the companies Act. It is not in dispute that the formula is mainly meant for Joint Stock Companies or proprietary concerns run on such lines. It is significant to remember that there is no fixed capital of the undertakings as in limited companies. The formula provides for a return of 6 per cent over the share capital. The K.G.F. mining companies had a fixed share capital of Rs. 164 lakhs. When the Mysore Government took over they have paid this amount and the balance sheet for the period ending 31st March 1968 shows

Government capital at Rs. 164 lakhs. Surprisingly the fixed capital of the undertaking is changing from year to year and the balance sheet for the subsequent years shows the following amounts as capital ending—

Rs. in lakhs

31-3-1959	187·22
31-3-1960	269·11
31-3-1961	255·00
31-3-1962	281·20
30-11-1962	320·09

and when the Central Government took over fro mthe Mysore Government they have shown the capital of Rs. 301 lakhs odd. As the formula provides return at higher rate on the fixed capital I do not think that the framers of the formula had anticipated a concern having a changing capital from year to year. The workers who are entitled to claim bonus and are parties to the distributions have no control over the management changing the capital year to year and I do not think the Full Bench formula of available surplus will be applicable.

136. Learned Counsel for the management has argued that the workers had by their statement of claim claimed profit sharing bonus. By their subsequent statement they had also claimed bonus as a term and condition of service and customary bonus which has not been proved and as there is no available surplus they are not entitled to claim any bonus. The Learned Counsel has invited my attention to the ruling reported in 1961 1 LLJ page 52 in which it has been observed:—

> "There is no doubt that it is open to an Industrial Tribunal in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending existing agreement or making a new one. This however does not mean that an Industrial Court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by the Supreme Court..... There are four types of bonus which have been evolved under the industrial law as laid down by the Supreme Court. Firstly there is what is called a production bonus or incentive wage (See Titaghar Paper Mills Vs. Their workmen) (1959 II LLJ 99) the second is bonus as an implied term of contract between the parties. (Ispahani Ltd. v. Ispahani Employees' Union (1959 II LLJ 46) the third is customary bonus in connection with some festival. See Grahams Trading Co. v. their workmen (195 II LLJ 393).

and the fourth is profit bonus which was evolved by the Labour Appellate Tribunal in Millowners Association, Bombay V. Rashtriya Mill Mazdoor Sangh Bombay (1950 LLJ 1247) and which has been considered by this Court fully in Muir Mills (1955 1 LLJ 1) and in the case of Associated Cement Companies 1959 I LLJ 644. It has been further observed:—

> "It would thus be clear that the essential concept of profit in bonus is that there should be an available surplus determined according to the principles laid down in the cases mentioned above for distribution. If there is no such available surplus for distribution there can be no case for payment of profit bonus. This is the industrial law as laid down by the Supreme Court with respect to profit bonus in Associated Cement Companies case 1959 1, LLJ 644.
>
> Hence it would not be open to an industrial court or Tribunal to ignore the above law as to bonus and to extend an agreement for payment of bonus which is against the basic concept of bonus as laid down by the decisions of the Supreme Court on the ground that an industrial court has power generally to extend agreements or to create new obligations."

Relying on these observations the learned Counsel urged that whatever may be the other circumstances as there is no available surplus the demand of the workers for bonus will not be justified.

137. I do not think that the management of the Kolar Gold Mining undertakings can validly rely on this ruling. The principles laid down in this ruling will be applicable only to a concern which is run on commercial lines with the avowed object of making profits. All the decisions of the Supreme Court will be applicable only to such concerns and I do not think that the right of the Kolar Gold Mining Undertaking's workmen to claim bonus from Centre after nationalisation will be affected by the decisions.

138. It is significant to remember that till the year 1956 the gold mining companies were under private management and were governed by the Companies Act. The decision of the Supreme Court in appeal against an award in the dispute raised by the workmen of these companies which is reported in 1958 1 LLJ also pertains to the claim of the workmen for bonus for the period 1953-54 when the concern was being run on commercial lines with the object of making profits and I do not think that the Tribunal will be precluded from granting bonus to the workers simply on the ground that there is no sufficient surplus for distribution among the three parties—If the demand is otherwise justified.

139. In the earlier part of any judgment I have discussed the evidence about the low wages paid to the workmen of the Undertakings and it is clear that there is not merely a gap but in the words of the union leaders there is a 'Yawning gap' between the actual wages paid and the living wages required in the region. I have also discussed the wages paid to the workmen at Bangalore where the cost of living index is lower than at the K.G.F. It is not in dispute that the workmen are contributing to the prosperity of the undertaking and in my opinion these circumstance shall weigh in the mind of every Tribunal while considering the question about the bonus especially when the employers are not selling the gold.

140. Shri C. M. Arumagam on behalf of the champian reaf has very vehemently argueed that the labour at the K.G.F. are being exploited from the beginning. They could not organize. They cannot meet both in ends and this was a fit case for granting bonus. It is significant to remember that formerly the labour unions due to law then existing could not function at K.G.F., and the labour movement in these undertakings started at a very late stage and they are not properly organized and the workmen are very low paid. The workers reside in colonies in thattles and when I had been to the K.G.F. mines for conducting the cases. I happened to see the condition of the labourers who were conspicuous by their shabby and torn clothes walking by the road bare footed in groups. They have to go deep down in the dark and the damp for mining work and their contribution can not be denied. The gold produced by them is not sold for making profit by the undertaking but it is taken over by the Government at the I.M.F. rate and if on this account there is no available surplus I do not think that the labour should be made to suffer on account of the same.

141. It is not in dispute that the workers' right to claim bonus had been recognised before the undertakings were taken over by the State Government in the year 1956. The gold mining companies have been giving bonus to their workmen every year either under an agreement or an award. The undertakings have been taken over by the Mysore Government under the K.G.F. Mining Undertakings and Acquisition Act, 1956, under the provisions of which in my opinion the rights and privileges of the workmen are not affected. Even after the acquisition the employees are entitled to hold office on the same terms and conditions having the same rights and privileges as to gratuity and other matters including the benefits of bonus. Even after nationalisation the Mysore Government has paid bonus. The Central Government has taken over the undertakings as a going concern and in my opinion the workmen of the undertakings will have the same rights to claim bonus from the Central Govt.

142. I have already observed that when the gold mining companies were under the management of John Taylor & Sons the gold produced was sold and fetched a profit. Even after nationallsation of the undertakings and taking over by the Mysore State Government the gold was sold and the workmen were paid bonus. But it was only after taking over of the undertaking by the Central Government the management declined to consider the demand of the workmen for bonus on the ground of want of available surplus.

143. It is not in dispute that Government had promulgated the gold control rules and subsequently the gold control order and had put restrictions on the transactions of pure gold and it is because of the economic policy that the entire gold is taken over by the Government at the I.M.F. rate. The gold produced by the undertakings has a cost price but it has no selling price. The Undertakings are not run with the object of making profit. The unions have invited my attention

to the remarks on page 126 of the book the salient features of the working of Government and Government aided industries in Mysore State which is a publication by the Department of Industries and Commerce. On this page the department has given the working results of the K.G.M.U. undertakings and regarding the working from December 1962 onwards they have mentioned below the column percentage of profit or loss etc. "The question of profit would not arise after taking over by the Central Government as the value of the gold is taken over by the Government at international market rate" This also clearly proves that the department is not running the industry for the purpose of profit.

144. Thus after taking over the undertaking the Central Government has changed the object of the undertakings and this change over takes it away from other similar industries and excludes it from the scope and restrictions of the bonus from applicable to other industries. The price of the produce of the concern is not subject to the laws of demand and supply as in free market. There is no price at all. Economic forces have no relation to it. There is no opportunity for this product to earn or make profits and the contention of the management about the applicability of the formula to the present case has been rightly criticised by the unions as a square peg in a round hole and the question about the bonus to be given to the K.G.F. workers cannot be decided on the working of the Full Bench formula but it shall have to be determined on other considerations.

145. The learned Counsel for the management has argued that as there is no sale of the gold and the entire quantity is taken over by the State the Tribunal should notionally value the gold produced and find out the profits for bonus. However it cannot be ignored when the undertaking is not run with the object of profit making the prosperity of the undertaking cannot be judged only from the profit and working results. When the object of running the industry undergoes a change the working of the organisation follows it. In such case there is a shift from the emphasis on profit to something else. The gold mining industry can now be said to be gold supplying service and the Full Bench formula will not be applicable. It is not the case of the management that the workers lost their right to claim bonus because of taking over of the gold and nationalising the undertakings and under these circumstances the question of the bonus dispute shall be decided on all other considerations.

146. This conclusion will be further corroborated even from the conduct of the parties during the last so many years. I have already observed that the workers have been granted bonus every year and have also stated in a tabular form the amount paid. It is in evidence that the bonus was paid under certain agreements between the employers and the unions and the contents of these agreements will throw sufficient light on the circumstnaces under which bonus was paid and would also reveal properly the mind of the employers in granting the bonus Exhibit E-13 dated 7th October, 1958 which pertains to the bonus agreement for the years 1953-54 it is stated:—

> "As the available surplus calculated in the manner mentioned above for the years 1953 and 1954 will not be appreciable and as hopes have been raised in the minds of the workmen by reason of the award of the Central Government Industrial Tribunal, Madras, and as the representatives of workmen have agreed to calculate the available surplus in the manner set out in paragraphs 7 and 8 above for the years 1953 to 1960-61 and have agreed to an "industrial truce regarding bonus" till the end of the Second Plan period and as the parties have agreed to settle the bonus for the four years 1953, 1954, 1955 and 1956 together the management have agreed as a special case and on the distinct understanding that it will not form a precedent for other years to pay bonus to the workmen of the Gold Mines and the allied Establishments as follows:—

Exhibit E-14 dated 22nd January, 1960 is the agreement about bonus for the period 29th November, 1956 to 31st March 1966 and 1st April 1958 to 31st March 1959. In this agreement it has been stated:—

> "In accordance with the principles laid down by the supreme Court in their Compromise Award dated 31st October, 1958 the net surplus for the purpose of payment of bonus was calculated which showed that there was no available surplus for bonus payment for the 16 months and 2 days period ended 31st March 1958 or for the 12 months ended 31st March 1959
>
> ..... Was considered on an *ad hoc* basis and the following agreement was reached in regard to the payment of bonus for the above periods"

Exhibit E-15 dated 30th December, 1960 is the agreement for bonus for the period 1st April 1959 to 31st March, 1960. In this agreement it has been stated:

"Payment of bonus for the 12 months ended 31st March, 1960 was considered on an *ad hoc* basis and the following agreement was reached.."

Exhibit E-16 dated 21st December, 1961 is for bonus for the year 1960-61. In this agreement it has been observed:-

'However the management have as a concession and on a purely ad hoc basis agreed to give bonus to the monthly rated and daily rated employees of the Kolar Gold Mining undertakings at the following rates':—

Exhibit E-17 dated 23rd December, 1962 is the agreement for bonus for the year 1st April, 1961 to 31st March, 1962. In this agreement it has been stated:—

"Whereas the Managing Director held discussions with the representatives of the Unions and explained to them that there is no available surplus to warrant the grant of any bonus, whereas the representatives of the unions pressed for payment of some bonus on an *ad hoc* basis, whereas the management on considering the request of the workmen have as a concession and on an *ad hoc* basis agreed to give bonus to the monthly rated and daily rated employees...."

Exhibit E-18 is the agreement dated for 4th January, 1964 bonus for the period 1st April, 1961 to 30th November, 1962. In this agreement it is stated:—

"..This was agreed to by the workers representatives and thereafter the management explained to the workers representatives that the industry was passing through a difficult time and that it has suffered a substantial loss during the above period and it was therefore difficult to concede any demand for bonus. After protracted negotiations and with a view to maintain harmonious relations the following settlement was arrived at."

147. The observations in these agreements clearly point out that though in the bonus dispute for the year 1953-54 there was a compromise under which the parties had agreed to calculate the available surplus upto 31st March, 1961 in a particular manner they had not followed the same for considering the question of bonus in any year. It has been argued that bonus in those years has been paid under agreement. It is true that the decision to pay bonus has been incorporated in the form of an agreement. However it is an empty argument as nothing has flowed as a consideration from the workers. These documents merely indicate willingness of the employers to pay bonus, which further shows that management wanted to do justice to the workers and to keep them satisfied. When parties sign a series of agreements and follow a certain course of conduct we can presume and infer the real intention behind it. hen the Chief Accounts Officer was questioned about the grant of bonus in previous years he has stated:—

"It is correct to say that bonus has been paid to the workmen irrespective of available surplus as per L.A.T. formula during the years of agreements. It was only for the period of 8 months from 1st April, 1962 to 30th November 1962 that bonus was paid in spite of a revenue loss.

Q. Even during the years when there was a revision of wages or dearness allowance you have paid bonus though there was not sufficient available surplus."

A. Yes."

148. This evidence clearly shows that the question about the payment of bonus to the workers of the K.G.M. undertakings from 1953-54 was never considered either in accordance with the compromise reached before the Supreme Court or the Full Bench formula and the workers were given bonus on an *ad hoc* basis. I have already observed that gold produced was sold in open market by the companies as well as by the Mysore Government and the management would have been justified to consider the question of bonus during those days by applying the principles of the bonus formula. However, it is clear from their conduct that after nationalisation they did not insist upon making the question of bonus dependent upon the results of the formula. After the Central Government took over the management, they did not sell the gold at all but kept it as reserve for their fiscal policy there is all the more greater reason to consider the question of bonus on the same lines *i.e.* on *ad hoc* basis as was done before.

149. Taking the different rates of gold I have calculated the profits and have stated the results in the earlier para. However, there is no sale in fact and there is no question of profit and these calculations have been made with a view to get some idea about the financial condition and the working results of the period. Though as per the Reserve Bank of India rates there appears to be a surplus of 16.63 lakhs I am aware that this surplus has been obtained because the management has failed to prove the prior charges of depreciation and rehabilitation, had they taken care to prove those charges perhaps there would have been no surplus. But in spite of the want of available surplus in my opinion the demand of the workers of the undertaking for bonus for the reason stated is justified.

150. By calculating the working results at the Hutti average rate and the Reserve Bank rate there is some gross profit. There may not be available surplus but there is no loss. It is not in dispute that the Legislature has recognised the principle of minimum bonus irrespective of the question of profit and there is no reason why the same principle should not be made applicable to the working of the undertakings. After all bonus afforded the means of bridging the gap between the actual wage and the need based wage and it is because of such considerations the State granted bonus every year. It is significant to remember that the Central Government has subsidising the Mysore Government for running the Kolar Gold mines and I do not think that the workers should be treated by the Central Government on different lines. The Hutti Gold mines pay bonus to their workmen. Even if the grant of bonus necessitates the curtailment of other expenditure I think that will be preferable to the discontent that might be caused by singling out these workers especially when Government has taken the gold, changed the conditions and disable the industry from making profits and I think that the workmen are entitled to bonus on the basis as they were paid before.

151. The Mysore Government has paid bonus of 2/3rds of 26 days basic salary for the period of eight months from 1st April, 1962 to November 1962. The present dispute is for the bonus of 16 months and in my opinion bonus equal to the basic salary of 32 days shall meet the ends of justice.

I direct the management of the Kolar Gold Mining Undertakings to pay to the workmen of the Kolar Gold Mining Undertakings bonus for the period 1st December, 1962 to 31st March, 1964 at the rate of 32 days basic salary for monthly rated employees and 32 days basic wages for the daily rated employees on the role of the undertakings during the period. The above bonus will be paid to the employees as per existing practice on the field in regard to payment of bonus.

The above bonus will be disbursed by the management to the workmen within one month from the date of publication of the award.

The management to pay costs of Rs. 500/- to each union.

Hence my award accordingly.

(Sd.) A. T. ZAMBRE,
Presiding Officer,
Central Government Industrial Tribunal,
Bombay.

[No. 24/28/64-LR.I/LR. IV.]

R. ANANDAKRISHNA. Jt. Secy.

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